Nov 27 1876
Mr. Louis
Durant

3-387

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 115.

JAMES CALLANAN, JR., APPELLANT,

vs.

MICHAEL HURLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 10, 1874.

Dec 9 1876
remd
Jas Storey

2
v.
2
a
1

SUPREME COURT OF THE UNITED STATES.

No. 115.

JAMES CALLANAN, JR., APPELLANT,

vs.

MICHAEL HURLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Appearance of respondent	17	4
Cost-bond	18	4
Answer	21	5
Record-entry, May 14, 1872	39	9
June 1, 1872	40	9
October 16, 1872	41	10
Motion for leave to amend bill of complaint	42	10
Record-entry on rule-day, January 6, 1873	44	10
Amendment to bill of complaint	45	11
Record-entry on rule-day, February 3, 1873	50	12
Answer to amended bill	51	12
Replication	59	14
Stipulation for continuance, &c.	61	14
Record-entry, May 13, 1873	63	15
Stipulation to open depositions	64	15
Do	65	15
Do	66	16
Do	67	16
Record-entry, October 15, 1873	68	16
Stipulation to appoint examiner	69	17
open depositions	71	17
COMPLAINANT'S EVIDENCE.		
Stipulation	73	17
Do	75	18
Deposition of E. W. Davenport	81	20
Isaac Dickerson	136	35
William Waddell	206	52
Wilkins Warwick	224	57
William Gardner	255	65

	Original.	Print.
Exhibit A, referred to in Gardner's deposition	261	66
Warwick's deposition	263	67
Dickerson's deposition	264	68
Deposition of A. S. Churchill	277	71
James W. Brown	283	73
Wilkins Warwick	288	74
William Gardner	291	75
Exhibit No. 1 to Gardner's deposition	294	76
Exhibit A to Gardner's deposition	295	76
Deposition of Cole Noel	303	79
Deposition of O. D. Smalley	332	86
Exhibit A	336	87
Exhibit B	337	87
Deposition of W. J. Marshall	345	90
J. N. Cornish	356	93
Howard James	363	95
E. W. Davenport	369	97
RESPONDENT'S EVIDENCE.		
Deposition of John Warford	416	109
Dexter Reynolds	478	125
Wilkins Warwick	504	132
Isaac Dickerson	529	138
William Gardner	544	142
Exhibit A, referred to in Gardner's deposition	550	143
Exhibit B, referred to in Gardner's deposition	551	144
Deposition of James Callanan	558	146
Exhibit A, referred to in Callanan's deposition	600	156
Deposition of Isaac Dickerson	609	158
Stipulation	691	177
Tax-sale deeds	695	178
Decree of court	737	190
Record-entry, June 3, 1874	750	194
Appeal-bond	751	194
Certificate of clerk	752	195

1 Pleas in the circuit court of the United States of America for the district of Iowa, at a term thereof begun and holden at the United States court-room in the city of Des Moines, in the State of Iowa and district aforesaid, on the second Monday of May, the same being the 11th day of May, A. D. 1874, before the Hon. John F. Dillon, United States circuit judge for the eighth circuit.

2, 3, 4

5 Be it remembered that heretofore, to wit, on the 2d day of January, A. D. 1872, Michael Hurley, by his attorneys, Mess. Brown, Campbell & Sully, filed in the clerk's office of the circuit court of the United States for the district of Iowa his bill of complaint against James Callanan, jr., and Thomas Meredith; which said bill of complaint is in words and figures following, to wit:

In the circuit court of the United States for the district of Iowa, in the circuit.

To the judges of the circuit court of the United States for the district of Iowa, in the circuit:

Michael Harley, of Bladensburg, in the State of Maryland, and a citi zen of the State of Maryland, brings this his bill against James Callanan, jr., residing at the city of Des Moines, in the State of Iowa, and a citizen of the State of Iowa, and Thomas Meredeth, residing in
6 Cass County, Iowa, and a citizen of the State of Iowa. And therefore your orator complains and says that pursuant to the provisions of the act of Congress in such cases made and provided, by the entry thereof, your orator became the owner in fee-simple of the following described lands situated in the county of Cass, in the State of Iowa, aforesaid, that is to say: The north half of the northwest quarter of section nineteen, in township seventy-four north, of range thirty-five west of the fifth principal meridian, (N. ½ N. W. 19, 74, 35.) Also the north half of the southwest quarter and the northwest quarter of section seven, and the north half of the northeast quarter and the north half of the northwest quarter of section three, and the south half of the southwest quarter of section seven, all in township seventy-four north, of range thirty-five west of the fifth principal meridian, (N. ½ S. W. ¼ & N. W. ¼ of sec. 7, the N. ½ of the N. E. ¼ & N. ½ of N. W. ¼ of sec. 3, and the S. ½ of S. W. ¼ of sec. 7, in 74, 35;) and the northwest quarter of section eighteen, in the same township and range, (N. W. ¼ 18, 74, 35.) Also
7 the south half of the southeast quarter (S. ½ of S. E. ¼) of section eight, (8,) and the west half of the southwest quarter (W. ½ S. W. ¼) of section eighteen, (18,) all in township seventy-four north, of range thirty-four west of the fifth principal meridian. Also the north half of the northwest quarter of section four, (N. ½ N. W. ¼ sec. 4,) and the south half of the southeast quarter (S. ½ S. E. ¼) of section twenty, (20,) of township seventy-seven (77) north, of range thirty-six (36) west of the fifth principal meridian.

Also the west half and the southeast quarter of the northwest quarter (W. ½ & S. E. ¼ of N. W. ½) and the west half of the southwest quarter (W. ½ of S. W. ¼) of section nineteen, (19,) township seventy-six (76) north, of range thirty-seven (37) west of the fifth principal meridian.

Also the southwest quarter of the northwest quarter of section twenty-nine, (29,) and the southeast quarter of the northeast quarter of section

thirty, (30,) all in township seventy-six (76) north, of range thirty-five (35) west of the fifth principal meridian.

Also the north half of the northwest quarter of section twenty-
8 five (25) and the northeast quarter of the northwest quarter of section three, of township seventy-five (75) north, of range thirty-six (36) west of the fifth principal meridian.

Also the south half of the northeast quarter of section eleven (11) of township seventy-four (74) north, of range thirty six (36) west of the fifth principal meridian. All of said lands being vacant and not in the actual possession of any person.

That sometimes the said James Callanan, junior, claims, alleges, and pretends that he is the owner of said premises, under and by virtue of *a* certain pretended conveyances thereof, for delinquent taxes, heretofore executed and delivered by the county treasurer of said Cass County, to a certain Orlando Meads and to a certain Dexter Reynolds, who are citizens of the State of New York; which said deeds purport to convey to the said Meads all of the said lands mentioned in this bill, situated in township seventy-six and seventy-seven, and all the rest and residue of the said lands are by the said deeds pretended to be conveyed to the said Dexter Reynolds; and that, at other times, the said Calla-
9 nan pretends and alleges that the said lands are the property of the said Dexter Reynolds and Orlando Meads, respectively.

Whereas your orator charges the truth to be, that, by some secret contracts or conveyances, the said James Callanan, junior, is the real owner of all and singular the interest and estate created by the said pretended tax-sale deeds in the said Dexter Reynolds and Orlando Meads, respectively, and that for some reason to your orator unknown, contrary to equity and good conscience, conceals the true extent and character of his estate and interest in the premises, to the manifest injury of your orator, who hath hitherto been unable to implead the proper parties for the purpose of removing the cloud cast upon his title by the said several pretended tax-sale deeds.

And your orator further shows to the court that, by virtue of the laws of the State of Iowa, the said tax-sale deeds are presumptive evidence of the regularity of the proceedings on which the same are severally founded, and on their face purport to divest all your orator's estate in the said lands, having, as by virtue of the provision of the laws
10 aforesaid they lawfully may be, been spread upon the records of the said county of Cass, which contains the evidence of your orator's title.

Your orator further shows that, in truth, the said several conveyances are void: for that the said lands were never sold for the non-payment of taxes, as in and by the said pretended deeds it is re*a*cted & set forth; for that no taxes were levied for the years for which the said lands were so pretended to be sold upon the said lands, or any of them; for that the taxes, if such there were, never became delinquent; for that there was no person authorized to receive payment of the taxes; for that there was no warrant or authority for the sale of said land for the non-payment of delinquent taxes, and for that no sale of the said land for the non-payment of taxes, real or pretended, ever took place, but certificates thereof were issued to the said Orlando Mead and the said Dexter Reynolds, respectively, reciting, contrary to the truth, as herein-before alleged, the sale of the said premises conformably to the
11 provisions of the statutes of the State of Iowa in such cases made and provided, under which said certificates the said pretended

deed and conveyances were issued to the said Mead and Reynolds, respectively.

That the said Callanan threatens, under the pretended title so set forth, to create other clouds upon the title of your orator by executing and delivering conveyances of the said lands in small parcels and putting the purchasers in possession thereof, whereby your orator will be put to great expense and trouble in prosecuting suits against the parties claiming under such conveyances in recovering the said premises and removing the cloud aforesaid.

That the said Thomas Merideth, contrary to equity and good conscience, under and by virtue of the said pretended tax-sale deeds, claims some interest or estate in the said lands of your orator.

That the said Orlando Mead and Dexter Reynolds are citizens of the State of New York, and cannot be joined herein without ousting
12 the jurisdiction of this court as to the said James Callanan, jr., and Thomas Merideth, who are the real parties in interest.

To the end that the said James Callanan, jr., defendant, may, if he can, show why your orator should not have the relief hereby prayed, he is required upon his corporal oath, and according to the best of his knowledge, rememberance, information, and belief, full, true, direct, and perfect answer to make to the several interrogatories hereinafter numbered and set forth, as appears by the note hereunder written.

And therefore your orator prays that the said certificates of sale in this bill set forth, and the treasurer's deeds therein issued to the said Orlando Meads and Dexter Reynolds, respectively, be cancelled, annulled, and held for naught by the decree of this court.

That the said James Callanan, jr., be decreed to have and hold
13 no title to the said premises thereunder and under the several conveyancy contracts, agreements, by which he pretends to hold the interest acquired by the said Dexter Reynolds and Orlando Meads to the said premises.

And that the title to the said premises, as against the said James Callanan, jr., and the said Thomas Merideth, be quieted in your orators.

And that your orator may have such other and further relief in the premises as the nature of the circumstances of this case may require and to this honorable court shall seem meet.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said Thomas Merideth and the said James Callanan, jr., defendents, commanding them,
14 respectively, on a day certain, to be named, and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises, and to stand, to perform, and abide such further order, direction, and decree as may be rendered against them.

And your orator will ever pray, &c.

(Signed) BROWN, CAMPBELL & SULLY,
Compts. Solicitors.

J. D. CAMPBELL, *of Counsel.*

The defendent, James Callanan, jr., is required to answer the interrogatories here following; that is to say:

1. Do you claim to own any interest in the lands described in this bill, and which of them?

15 2. What is the character of your title, and from whom do you claim title?

3. Have you any written contract, agreement, or conveyance wi
either the said Orlando Mead, or Dexter Reynolds, or either of the
affecting the said lands, or any of them, or affecting them with oth
lands? If so, please set the same forth fully in your answer heret
giving copies of all writing mentioned in this interrogatory.

4. If you have a contract with the said Mead or Reynolds, or either
them, relating to or affecting said lands the evidence of which is
letter and correspondence, annex to your answer copies of all lette
and correspondence which are necessary to show the extent and natu
of your interest.

16 5. What have you done by way of part performance of any
the contracts hereinbefore inquired for or referred to in yo
answer to the foregoing interrogatories?

(Endorsed:)—Filed Jan'y 2, 1872. George B. Corkhill, clerk.

17 And on the 6th day of January, 1872, *the* there appears on t
records of the proceedings of said court in said entitled cause t
following entry, to wit:

United States circuit court, district of Iowa.

JANUARY 6TH, 1872.

MICHAEL HURLEY, PLTFF.,
vs.
JAMES CALLANAN, JR., AND MOSES MEREDITH, defts. } In equity.

Comes now Barcroft, Gatch and Hammond, and enter appearance f
defendant, James Callanan, jr., in the above-entitledc ause, this 6th da
of January, A. D. 1872.

(Signed) GEORGE B. CORKHILL, *Clerk.*

18 And on the 9th day of January, 1872, complainant filed i
said clerk's office his cost bond, which is in words and figures fo
lowing, to wit:

Know all men by these presents, that we, S. E. Brown and J. I
Campbell, of Davenport, in the county of Scott and State of Iow
are held and firmly bound unto George B. Corkhill, clerk of the circu
court of the United States for the district of Iowa, in full and ju
sum of one hundred dollars, current money of the United States, to b
paid to the said George B. Corkhill, his heirs, executors, admini
19 trators, or assigns; to which payment, well and truly to be made
we bind ourselves, our heirs, executors, and administrator
jointly and severally, by these presents, sealed with our seals, and date
this sixth day of January, in the year of our Lord one thousand eigh
hundred and seventy-two.

The condition of the above obligation is such that, whereas M. Hurle
has this day, to wit, the date above mentioned, instituted a suit in th
said circuit court of the United States for the district of Iowa agains
James Callanan, jr., and others:

Now, if the said plaintiff, his executors or administrators, shall we
and truly discharge all costs that may accrue and be adjudged agains
the said plaintiff in the prosecution of said suit, and shall well and trul
discharge all costs that may accrue in this behalf if judgment shall pas

against the said defendant, and the costs aforesaid fail to be collected of said defendant, and all costs that may accrue on failure of the plaintiff to prosecute said suit to effect, then this obligation to be void, otherwise to remain in full force and effect; and it is agreed that in case of failure to pay the costs as above provided judgment may be entered against us on this obligation.

(Signed) S. E. BROWN.
J. D. CAMPBELL.

(Endorsed:) Filed Jan'y 9, 1872. George B. Corkhill, clerk.

And afterward, to wit, on the 26th day of Feb., 1872, defendant, James Callanan, jr., by his attorneys, Messrs. Barcroft, Gatch & Hammond, filed in said clerk's office his answer to the bill of complaint herein; which said answer is in words and figure' following, to wit:

In the circuit court of the United States for the district of Iowa.

Answer of James Callanan, jr., to the bill of complaint of complainant.

MICHAEL HURLEY, COMPLAINANT,
vs.
JAMES CALLANAN AND THOMAS MEREDITH, respondent'.

This defendant, now and at all times hereafter craving to himself all and all manner of benefit or advantage by exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised itis material or necessary to make answer to, answering says:

That this respondent says he does not know and has never been informed, save by unreliable rumor and the said complainant's said bill, whether the complainant became the owner in fee-simple of the lands described in said bill of complain*ant*, or any portion thereof, pursuant to the provisions of an act of Congress or otherwise, and leaves the complainant to make such proof thereof as he shall be advised is material, and denies that complainant is the owner in fee-simple or of any interest whatever in the following-described premises, being part of the premises described in his said bill of complain*ant*, to wit:

The north fractional half of the northwest quarter of section 19, township 74, range 35 west of the fifth principal meridian; the north fractional half of the southwest quarter and the northwest fractional quarter of section 7, and the north fractional half of the northeast quarter, and the north half of the northwest quarter of section 3, and the south half of the southwest quarter of section 7, all in township 74 north of range 35 west of the fifth principal meridian; the south half of the southeast quarter of section 8, and the west half of the southwest quarter of section 18, all in township 74, range 34 west of 5th p. m.; the north half of the northwest quarter of section 4 and the south half of the southeast quarter of section 20, twp. 77, range 36 west 5th p. m.; the west half and the southeast quarter of the northwest quarter and the west half of the southwest quarter of sec. 19, twp. 76, range 37 west 5th p. m.; the southwest quarter of the north west quarter of section 29, twp. 76 north of range 35 west 5th p. m.;

the north half of the northwest quarter of sec. 25 and the northeas
quarter of the northwest quarter of sec. 3, twp. 75 north of range 3
west 5th p. m., Iowa, the south half of the northeast quarter of sectio
11, twp. 74 north of range 36 west of 5th p. m., Iowa, or any par
24 or portion thereof, and alleges and avers that said several peice
of land above described were subject to taxation for the year
1859, 1860, 1861, and 1862, and that the same were duly listed and as
sessed for the purpose of taxation for each of said years.

That the taxes were levied thereon as follows: Upon the fr. north hal
of the northwest quarter of sec. 19, twp. 74, range 35, for the year 1860
$3.44; for the years 1861, $2.78; for the year 1862, $1.35: and the nort
fr. half of the northwest quarter of sec. 7, twp. 74, range 35, for year
1860, $4.46; for the year 1861, $2.82; for the year 1862, $1.37: an
upon the south fr. half of the northwest quarter of said sec. 7, for th
year 1860, $4.46; for the year 1861, $2.82; for the year 1862, $1.37: an
for the north fr. half of the southwest quarter of said section 7, for th
year 1860, $4.46; for the year 1861, $2.86; for the year 1862, $1.55: an
upon the southeast quarter of the southwest quarter of said section 7
for the year 1861, $2.82; for the year 1862, $1.40: for the south
25 west of the southwest of said section, for the year 1861, $2.82; fo
the year 1862, $1.40: for the northeast quarter of the northeas
quarter of section 3, twp. 74, range 35, for the year 1860, $2.40; for th
year 1861, $1.64; for the year 1862, $0.79: for the northwest quarter o
the northeast quarter of said section 3, for the year 1860, $2.40; for th
year 1861, $1.64; for the year 1862, $0.79: northeast of the northwest
for the year 1860, $2.40; 1861, $1.64; for the year 1862, $0.79: for th
northwest of the northwest of said section 3, for the year 1860, $2.40
for the year 1861, $1.64; for the year 1862, $0.79: upon the southwes
of the southeast of sec. 8, twp. 74, range 35, for the year 1861, $2.28; fo
the year 1862, $1.10: upon the northwest of the southwest of sec. 18
twp. 74, range 34, for the year 1861, $2.28; for the year 1862, $1.10: fo
the southwest of the southwest of section 18, for the year 1861, $2.28
for the year 1862, $1.10: upon the southwest of the northeast o
26 section 11, twp. 74, range 36, for the year 1860, $3.45; for th
year 1861, $2,79; for the year 1862, $1.36: upon the S. E. of N
E. of 11, 74, 36, for 1860, $3.45; 1861, $2.79; 1862, $1.36: upon the north
east of the northwest of sec. 3, twp. 75, range 36, for 1859, $2.09; fo
1860, $2.60; for 1861, $2.26; for 1862, $1.64: for the northeast of th
northwest of sec. 25, twp. 75, range 36, for the year 1860, $2.60; for th
year 1861, $2.26; for the year 1862, $1.64: for the northwest of the north
west of said section 25, for the year 1859, $2.09; for the year 1860
27 $2.60; for the year 1861, $2.26; for the year 1862; $1.64: upon th
southwest of the northwest of sec. 29, twp. 76, range 35, for th
year 1861, $3.38; for the year 1862, $1.76: upon the southeast of th
northwest of sec. 19, twp. 76, range 37, for 1860, $3.14; for 1861, $2.75
for 1862, $2.03: upon the northwest of the northwest of said sec. 19, an
the southwest of the northwest, and upon the northwest of the south
west, and upon the southwest of the southwest of said section 19, each
for the year 1860, $2.20; for the year 1861, $1.83; for the year 1862
$1.30: upon the northeast of the northwest of sec. 4, twp. 77, range 36
and the northwest of the northwest of said sec. 4, each, for the year 1861
$2.89; for the year 1862, $1.94.

28 And that on and before the 4th day of January, A. D. 1864, ther
was due for taxes, interest, and costs upon each of said severa
peices the several amounts for the said several years as hereinabov
stated respectively.

And that on the said 4th day of January, 1864, at a sale begun and publicly held on the first Monday in January, 1864, *and* a portion of said several peices of land were sold at public auction by the treasurer of said Cass County to one Dexter Reynolds, and the ballance of said several peices of land were so sold to one O. Meads.

Each of said several peices having been sold seperately for the amount due thereon for the taxes, interest, and costs, the whole of each peice being the least quantity bid for, and payment of said several amounts having been made by the said Dexter Reynolds for all the peices
29 and parcels so by him purchased, and by the said O. Meads for the pieces and parcels so by him purchased.

The said treasurer sold said several pieces to the said Dexter Reynolds and O. Meads, respectively, and issued certificates of sale therefor.

And that afterward, to wit, on the 29th day of January, 1867, the full period of three years having expired from the day of said sale, and said property or any part thereof not having been redeemed from said sale, the treasurer of said county made, executed, and delivered deeds of conveyance for the frl. northwest of the northwest and northeast of the northwest of section 19, twp. 74, range 35; the frl. N. E. of the northwest and northwest of northwest; the southeast of the northwest and southwest of northwest; the northeast of southwest and northwest of southwest; the southwest of southwest and southeast of southwest, all in sec. 7, twp. 74 north of range 35 west; the northeast of
30 northeast and northwest of northwest; the northwest of northeast; the northeast of northwest and northwest of northwest of sec. 3, twp. 74, range 35 west; the southwest of southeast and southeast of southeast of section 8, twp. 74, range 35 west 5th p. m.; the *the* N. W. of S. W. and S. W. of S. W., sec. 18, twp. 74, rang' 34 west; the southwest of northeast of sec. 11, twp. 74, range 36; the northeast of the northwest of sec. 3, twp. 75, range 36 west; the N. E. of N. W. and N. W. of N. W. of sec. 25, twp. 75, range 36 west; the S. W. of S. E. and S. E. of S. E. of sec. 20, twp. 77, range 36 west, to said Dexter Reynolds; and for the S. W. of N. W. of sec. 29, twp. 76, range 35; the S. E. of N. W. and N. W. of N. W.; the S. W. of N. W. and N. W. of S. W. and S. W. of S. W. of sec. 19, twp. 76, range 37 west; the N. E. of N. W. of sec. 4; the northwest of northwest of said sec. 4, twp. 77, range 36 west 5th p. m., Iowa, to said O. Meads.

31 Which deeds were duly acknowledged on the said 29th day of January, 1867, and filed for record and recorded on the same day, in the office of the recorder of said county, in book I of said record.

And thereby all the right, title, interest, and estate of the former owner in and to said lands, and also all the right, title, interest, and claim of the State of Iowa and county of Cass therein became and was, and still is, vested in said Reynolds and Meads.

And defendant alleges that the southwest of the southeast and the southeast of the southeast of sec. 20, twp. 77, range 36, was subject to taxation for the year 1863, and, on the 2d day of January, 1865, the taxes upon each of said peices of land being delinquent and unpaid, and amounting, with the interest and costs thereon, to the sum of two dollars and sixty-five cents each, said pieces of land, on the 2d day of January, 1865, were by the treasurer of said county sold at pub-
32 lic auction to Dexter Reynolds for the said sum of two dollars and sixty-five cents each; the whole of each of said peices being the least quantity bid for.

And afterwards, to wit, on the 15th day of July, 1868, the full period

of three years having elapsed and said land not having been redeemed, or any part thereof, from said sale, the treasurer of said county executed and delivered to said Dexter Reynolds a deed of conveyance for said premises, duly acknowleged and recorded in the office of the recorder of deeds of said Cass County, in book M of said records.

And the said Dexter Reynolds subsequently paid the taxes for the year 1864, amounting to two dollars and six cents on each peice; for the year 1865, amounting to two dollars and five cents on each piece; for the year 1866, amounting to one dollar and ninety-five cents on each
33 piece, after the same became delinquent for each of said years.

And afterwards, to wit, on the first day of November, 1869, said lands were sold for the delinquent taxes levied for the year 1860, $6.38 on each of said pieces for said year; for the year 1861, being $7.40 upon each of said pieces for said year; for the year 1867, being $4.20 for each of said pieces, and for the year 1868, $4.83 for each of said pieces, which said several amounts were paid by the said James Callanan, and the title to all of said several pieces of land is held and owned by the said Reynolds and Meads.

And thereafter, to wit, in the month of February, 1868, said Callanan entered into an agreement with said Dexter Reynolds to purchase said premises among others, and the same are to be conveyed by the said Reynolds to the said James Callanan upon his performance of the stipulations of said contract upon his part, and the time for the performance of said contract has not expired.

34 And after said tax-sales of said lands they were subject to taxation for *for* the years 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871. And taxes were levied and assessed thereon for each of said years, and being delinquent thereon for the year 1863, amounting to $62.35, and for the year 1864, amounting to $53.97, and for the year 1865, amounting to $64.88.

The said Dexter Reynolds paid said taxes thereon for each of said years, and taxes being levied thereon for the year A. D. 1866, and the same being unpaid and delinquent, the same were seperately sold to the said Reynolds and Meads, each buying the respective portions theretofore sold and conveyed to them respectively as aforesaid on the 7th day of November, 1867, and paid therefor the amount due upon each of said pieces severally, amounting to $84.38.

And the said Dexter Reynolds and O. Meads paid the taxes
35 levied on said lands for the years A. D. 1867, amounting to $82.28, and for 1868, amounting $88.30, and for 1869, amounting to $135.69, after the same delinquent for each of said years.

And afterwards, to wit, on the 2d day of October, 1871, the taxes on said several pieces b'ing delinquent for the year A. D. 1870, each of said pieces was sold by the treasurer of said county for the said delinquent taxes, interest, and cost, and were bid off by different parties.

And afterwards the said James Callanan *par* certificates of sale given to the purchasers thereof to the amount.

And respondent alleges that he has, to the extent of his performance of his contract with said Dexter Reynolds, an equitable interest in said lands, under and by virtue of said contract with the said Dexter Reynolds for the sale and conveyance of said premises to said Cal-
36 lanan; that said Dexter Reynolds and O. Meade continue to hold the title to said premises. Respondent denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the said bill of complaint contained material or necessary for

this defendant to make answer to and not herein and hereby well and sufficiently answered, confessed, or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) J. CALLANAN.

37 STATE OF IOWA, *Polk County, ss:*

I, James Callanan, jr., being duly sworn, depose and say that all the several matters and things which are set forth in the foregoing answer as from information of others I believe to be true, and that all the several other matters therein set forth are true, in substance and in fact.

(Signed) J. CALLANAN.

Sworn to by said James Callanan, jr., before me, and signed by him in my presence, this 24th day of February, 1872.

[L. S.] (S'g'd) J. R. HAMMOND,
Notary Public.

(Endorsed:) Filed February 26, 1872. George B. Corkhill, clerk.

38 And on the 14th day of May, 1872, the same being of the May term, 1872, of said court, there appears in the records of the proceedings thereof in said entitled cause *appeared* the following entry, to wit:

39 United States circuit court, district of Iowa, May term, 1872.

TUESDAY, *May* 14, 1872.

MICHAEL HURLEY
vs.
JAMES CALLANAN & MOSES MERIDETH. } No. 300. Eq.

This cause coming on for a hearing, the time for taking testimony herein is extended to the next term of this court, and the cause is continued by consent of parties.

40 And on the 1st day of June, 1872, the same being of the May term, 1872, of said court, there appears in the record of the proceedings thereof in said entitled cause the following entry, to wit:

United States circuit court, district of Iowa, May term, 1872.

SATURDAY, *June 1st*, 1872.

MICHAEL HURLEY
vs.
JAMES CALLANAN ET AL. } No. 300. Eq.

This coming on this day, upon motion of plff's attys., ordered that J. T. Hanna, esq., be, and he hereby is, appointed a commissioner to take testimony herein.

41 And on the 16th day of October, 1872, the same being of the October term, 1872, of said court, there appears on the records of the proceedings thereof, in said entitled cause, the following entry, to wit:

United States circuit court, district of Iowa, May term, 1872.

WEDNE'DAY, *Oct.* 16, 1872.

MICHAEL HURLEY
vs.
JAMES CALLANAN ET AL. } No. 300. Eq.

This day this cause coming on for hearing by consent of parties, it is ordered that the time for taking testimony herein be extended to the 1st day of next term, and that this case be continued.

42 And afterwards, to wit, on the 31st day of Dec., 1872, complainant filed in said clerk's office a motion for leave to amend his original bill, which said motion is in words and figures following, to wit:

In the circuit court of the United States for the district of La.

Motion for leave.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR., AND OTHERS.

The complainant in the above-entitled cause hereby moves the court for leave to amend his original bill of complaint herein filed and to file the amendment herewith tendered, setting forth additional grounds of relief, which he alleges has come to his knowledge since the filing of his original bill herein, and rendered necessary *necessary* by respond-
43 ents' answer in this cause filed; and inasmuch as he has not joined issue upon said answer by replication or otherwise, he asks that such leave be granted wihout costs, if such be the pleasure of the court.

(S'g'd) MICHAEL HURLEY, *Compl't.*
By PHILLIPS & PHILLIPS, *his Attys.*

It is hereby ordered that complainant have leave to file amendment to his original bill without costs, as within asked.

(Endorsed:) Filed Dec. 31, 1872. George B. Corkhill, clerk.

44 And on the 6th day of January, 1873, the same being rule-day in said court, there appears in the records of the proceedings thereof in said cause, the following entry, to wit:

United States circuit court, district of Iowa. Rule-day. Monday, January 6th, 1873.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR. } In equity.

This day comes plff. by Mess. Brown & Campbell & Phillips & Phillips, and by consent of defendant files an amendment to his bill.

Attest:
(Signed) GEORGE B. CORKHILL, *Clerk.*

45 And on the same day, to wit, Jan'y 6th, 1873, complainant by his attorney filed in said clerk's office an amendment to his bill of complaint in said cause, which said amendment is in words and figures following, to wit:

In the circuit court of the United States, district of Iowa.

Amendment to the complainant' bill.

MICHAEL HURLEY
vs.
JAMES CALLANAN AND OTHERS.

And now, 13th December, 1872, the said defendant having filed his answer herein, and the matter alledged therein having rendered it necessary for the said complainant to amend his bill the said complainant, affirming and reiter'ing the averments contained in his bill, further complains and says that the said pretended sales for taxes are
46 void and of no effect to confer title to the said lands, or any of them, upon the said Mead or the said Reynolds or upon the said Callanan, nor to deprive the said complainant of his title thereto, for that the said lands at the time of the said several pretended assessments and levies were not subject to taxation, and for that the said James Callanan, Orlando Mead, and Dexter Reynolds, at and before the issuing of the said certificates of sale, unlawfully combined and confederated together for the purpose of preventing competition at the sale of lands for taxes then to be held in said county of Cass, and then and there agreed that the said Mead and the said Reynolds should invest in tax-sales in the said county of Cass to the amount of twelve thousand dollars; that the said Mead should take the delinquent lands in the northern
47 part of the county, and the said Reynolds should take lands in the southern part of the county; cash to the amount of six thousand dollars; that, pursuant to the said unlawful combination and confeder'cy, the said defendants appeared by their agent, to your orat*a* unknown, at the court-house in said county of Cass, on the day of January, A. D. 1864, the day fixed for the sales of land for delinquent taxes in said county, and directed the treasurer of the said county to issue certificates of sale to Orlando Mead for lands upon which taxes were delinquent, commencing at the northeast corner of the county and continuing the issue of certificates until the amount of sales should reach the sum of six thousand dollars; and further directed the said treasurer to issue certificates of sale to Dexter Reynolds for lands upon which taxes were delinquent in the southern part of the county,
48 commencing at the southeast corner of the county and continuing the issue of certificates until the amount of sales should reach the sum of six thousand dollars; that pursuant to the said direction, without having sold any of the said lands to either the said Mead or the said Reynolds, the said treasurer issued the certificates to the said Mead and the said Reynolds under which they afterwards obtained the deeds set up in the said answer filed herein for the said lands of your orator, of all of which said several unlawful doings the said Jas. Callanan had notice. And your orator here brings into court and deposits for the use of said defendants all of the moneys alleged by them to have been paid by them and each of them for taxes upon the said premises, and every part thereof. Your orator, further com-
49 plaining, says that the sale of the said several premises for delinquent taxes, made on the several days in the said answer set

forth, have no effect to vest the title to said premises in the said defendant or any of them, for that the said complainant hath redeemed the same in accordance with the laws of the said State of Iowa, from the said sales made subsequent to the said sale of January, A. D. 1864. Wherefore your orator prays for the relief and decree which he has before prayed.

(Signed) BROWN & CAMPBELL.
Complt. Solicitors.

(Endorsed:) Filed by consent as of Jan., 1873, rule-day. Barcroft, Given & Hammond, attys. for deft. Also, filed by consent Jany. 6, 1873. George B. Corkhill, clerk.

50 And afterwards, to wit, on the 3rd day of Feb'y, 1873, the same being rule-day in said court, there appears on the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa. Rule-day, Monday February 3rd, 1873.

M. HURLEY
vs. } In equity.
J. CALLANAN, JR., ET AL.

This day comes deft. J. Callanan, jr., by Barcroft, Given and Hammond and file answer to amended bill of complt. herein.

Attest:
(Signed) GEORGE B. CORKHILL, *Clerk.*

51 And on the same day, to wit, Feb'y 3d, 1873, James Callanan, jr., respondent herein, filed his answer to the amended bill of complaint, which said answer is in words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

Answer.

MICHAEL HURLEY
vs. }
JAMES CALLANAN ET AL.

And now comes the said James Callanan, jr., respondent, and, saving and reserving to himself all and all manner of benefit or advantage by exception or otherwise that may be had or taken to the errors, uncertainties, or imperfections of the amended petition of the said complainant filed herein, and not waiving any of the denials, allegations, or matters and things in his answer to the original bill of complaint, for
52 answer to said amended bill of complaint denies that the said sales of the lands described in said bill are void or of no effect to confer title to said lands upon said Mead or the said Reynolds, or upon the said Callanan, or that said sales do not deprive the said complainant of his alleged title hereto; denies that the said lands at the time of the said several pretended assessments and levies were not subject to taxation, and avers that said sales for taxes were good and valid and did confer title to said lands and all of them unto said Mead and the said Reynolds, and did deprive said complainant of any title or interest that he might had therein; and avers that at the time of said several assessments and levies said lands were subject to taxation, and that said assessments and
53 levies were legally made, and denies that the said respondent Orlando Mead and Dexter Reynolds or any on either of them, at or

before the issuing of said certificates of sale or at any other time, unlawfully or otherwise, combined or confederated for the purpose of preventing competition at the sale of the said lands for taxes then to be held in said county of Cass, and denies that as to himself, upon his own knowledge, and that as to the said Meads and Reynolds, upon information and belief, that the said Meads and Reynolds and respondent agreed to invest in tax sales in the said county of Cass to the amount of twelve thousand dollars; that said Meads should take the delinquent lands in the northern part of the county and the said Reynolds should take the delinquent lands in the southern part of the county aforesaid to the amount of six thousand dollars each.

54 Denies, upon like information and belief, that the defendants or either of them appeared by their agent in pursuance of the alleged unlawful combination at the court-house, in said county of Cass, on the day of January, A. D. 1864, or at any other time, and directed the treasurer of said county to issue certificates of sale Orlando Meads for lands upon which taxes were delinquent, commencing at the northeast corner of the county, and continue*ing* the issuing of certificates until the amount of sales should reach the amount of six thousand dollars, or any other sum, or that he further directed the said treasurer to issue certificates of sale to Dexter Reynolds for lands, upon which said taxes were delinquent in the southern part of said county, commencing at the southeast corner thereof and to continue the issuance of the

55 certificates until the amount of sales should reach the sum of six thousand dollars, or any other sum; or that pursuant to said alleged direction the treasurer of said county issued certificates to said Mead or the said Reynolds without having sold any of said lands to either of them, and denies that they or either of them afterward obtained deeds for said land under said arrangement. And respondent denies that he had any knowledge or notice of the alleged unlawful doings of the said Meads and Reynolds and treasurer of said county, or either of them, or of any unlawful doings by them or either of them in relation

56 to the *to the* sale of the said lands or certificates of sale issued pursuant thereto. And respondent, further answering, says that after the filing of his answer to the original bill of complaint herein, the contract between respondent and the said Reynolds for the conveyance of the lands described in said petition and other lands has been fully performed and executed, and the land *land* has been conveyed to respondent, who is the owner thereof in fee-simple, and respondent alleges that he purchased said lands for a valuable consideration, without notice of any fraud, irregularity, or imperfection affecting the sale thereof for taxes or the execution of the certificates of sale or the deed of the treasurer conveying the same, in pursuance of said sale and the statute of the State of Iowa in relation thereto. And, for further answer, plaintiff says that the said complainant had not, at the time of the com-

57 mencement of this action, paid off the taxes due upon said property, nor had the same or any part thereof been paid by any person under whom the said complainant claims title. And respondent denies all and *and and* all manner of unlawful combination and confederacy wherewith he is by said amended bill charged; without this, that there is any other matter, cause, or claim in the said amended bill of complaint contained material or necessary for the respondent to make answer to any not herein and hereby well and sufficiently answered, confessed, or denied, is true to the knowledge or belief of this defendant.

(S'g'd) BARCROFT, GIVEN & HAMMOND,
Attys. for Defendant.

STATE OF IOWA,
Polk County, ss:

I, James Callanan, being duly sworn, depose and say that all the several matters and things which are set forth in the fore-
58 going answer as from information of others, I believe to be true, and that all the several other matters therein set forth are true in substance and in fact.

(Signed) J. CALLANAN.

Sworn to by said James Callanan before me, and subscribed by him in my presence, this 31st day of January, A. D. 1873.

[L. S.] (S'g'd) J. R. HAMMOND,
Notary Public.

(Endorsed:) Filed February 3rd, 1873. George B. Corkhill, clerk.

59 And afterwards, to wit, on the 1st day of March, 1873, complainant, by his attys., filed in said clerk's office his replication, which said replication is in words and figures following, to wit:

In circuit court United States for district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR., AND MERIDETH. } In chancery.

The replication of Michael Hurley, complainant, to the answer of James Callanan, jr., defendant herein. This repliant saving and reserving to himself all and all manner of exception and advantage to the manifold insufficiencies of the said answer, and for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and
60 sufficient in the law to be answered unto and that the said answers of the said defendant are uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the said, to be replied unto, confessed, or avoided, traversed or denied, is true. All of which matters and things this repliant is and will be ready to aver and prove as the honorable court shall direct, and humbly pray as in and by his original bill he hath already prayed.

(S'g'd) PHILLIPS & PHILLPS,
Solicitors for Compl't.

(Endorsed:) Filed March 1, 1873. George B. Corkhill, clerk

61 And afterwards, to wit, on the 12th day of May, 1873, there was filed in said clerk's office a stipulation of parties; which said stipulation is in words and figures following, to wit:

In circuit court of the United States, district of Iowa. May term, 1873.

Stipulation.

MICHAEL HURLEY
vs.
JAMES CALLANAN ET AL., DEFTS.

It is hereby agreed and stipulated by and betweent he parties hereto,

by their attorneys and solicitors, that the above entitled cause be continued at this term of court, and that the time of taking evidence herein be extended to both parties for sixty days from and after the adjournment of court at this said term.

62 (Signed) J. T. HANNA,
Attorney for Hurley.

(S'g'd) PHELPS & DELANO,
For Callanan et al.

(Endorsed:) Filed May 12, 1873. George B. Corkhill, clerk.

63 And afterwards, to wit, on the 13th day of May, 1873, the same being of the May term, 1873, there appears in the record of the proceedings of said court, in said canse, the following entry, to wit:

United States circuit court, district of Iowa. May term, 1873. Tuesday, May 13, 1873.

M. HURLEY
vs.
JAMES CALLANAN ET AL. } No. 300. Eq.

This cause coming on for hearing, it is ordered that the depositions returned into court be opened, and that the cause be continued, as per stipulation filed.

64 And afterwards, to wit, on the 28th day of May, 1873, a stipulation of parties was filed in said clerk's office, which said stipulation is in words and figures following, to wit:

United States circuit court.

HURLEY.
vs.
CALLANAN. } Equity, 300.

Consent is hereby given to open and take depositions from files in above-entitled cause.

(S'g'd) BARCROFT, GIVEN & HAMMOND,
Attys. for Defendant.

(Endorsed:) Filed May 28, 1873. George B. Corkhill, clerk.

65 And afterwards, to wit, July 8th, 1873, there was filed in said clerk's office a stipulation of parties in words and figures following, to wit:

In U. S. circuit court, district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR., ET AL. } Eq.

The clerk will open any depositions on file in the above cause. July 8, '73.

(S'g'd) PHILLIPS & PHILLIPS, *Attys. plff.*
BARCROFT, GIVEN & HAMMOND,
Attys. for Defts.

(Endorsed:) Filed July 8, 1873. George B. Corkhill, clerk.

66 And afterwards, to wit, on the 9th day of October, 1873, a stipulation of parties in said cause was filed in said clerk's office, which is in words and figures following, to wit:

In circuit court United States for district of Iowa.

MICHAEL HURLEY,
vs.
JAMES CALLANAN, JR.

It is stipulated that the clerk may open any depositions on file in this cause.

Oct. 9th, 1873.

(Signed) PHILLIPS & PHILLIPS, *for Plff.*
BARCROFT, G. & H., *for Deft.*

(Endorsed:) Filed October 9th, 1873. George B. Corkhill, clerk.

67 Afterwards, to wit, on the 11th day of October, 1873, a stipulation of parties in said cause was filed, which is in words and figures following, to wit:

In U. S. circuit court, district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN ET AL., } In equity.

The clerk will open any depositions on file in said cause.

Signed this Oct. 11, '73.

(S'g'd) PHILLIPS & PHILLIPS, *for Plff.*
BARCROFT, GIVEN & HAMMOND,
For Deft.

(Endorsed:) Filed Oct. 11, 1873. George B. Corkhill, clerk.

68 And afterwards, to wit, on the 15th day of Oct., 1873, (the same being of the October term, 1873, of said court,) there appears in the records of the proceedings thereof in said entitled cause the following entry, to wit:

United States circuit court, district of Iowa, Oct. term, 1873.

WEDNESDAY, *Oct.* 15, 1863.

M. HURLEY
vs.
JAMES CALLANAN ET AL. } No. 300 eq.

This cause came on for hearing; plff. appeared by Phillips & Phillips, & defendant by Barcroft, Given & Hammond, and thereupon it is ordered that the time for taking proofs herein be enlarged as follows: The plaintiff to have three months from November 1st in which to close his testimony, and the defendants to have two months thereafter to close their evidence herein, and plaintiff to close his rebutting evidence prior to ten days before the next term of this court; and the case is continued.

69 And afterwards, to wit, on the 3d day of Jan'y, 1874, there was filed in said clerk's office a stipulation of parties, which said stipulation is in words and figures following, to wit:

In U. S. circuit court, district of Iowa.

M. HURLEY
vs.
JAMES CALLANAN, JR., & OTHERS. } In equity.

We hereby consent and agree in the above cause that the clerk of said court, or his deputy, may appoint an examiner or examiners to take testimony, upon application of either party, without an order of one of the judges of said court obtained therefor.

(S'g'd) PHILLIPS & PHILLIPS,
For Compl't.
J. R. BARCROFT, *for Deft.*

70 (Endorsed:) Filed Jan. 3, 1874. George B. Corkhill, clerk.

71 And afterwards, to wit, on the 3d day of February, 1874, a stipulation of parties in said cause was filed in said clerk's office, which is in words and figures following, to wit:

In U. S. circuit court, district of Iowa.

M. HURLEY
vs.
J. CALLANAN ET. AL. } Equity.

We consent that clerk make publication of depositions on file.
Feb'y 2, '74.

(S'g'd) PHILLIPS & PHILLIPS,
For Compl't.
J. R. BARCROFT,
Atty. for Deft.

(Endorsed:) Filed Feb. 2nd, 1874. George B. Corkhill, clerk.

72 And upon the trial of said said cause, the said complainant, to sustain the *the* issues on this part, introduced and read in evidence certain documents and depositions, of which the following are true copies:

73 In circuit court U. S., district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR., AND OTHERS. } In chancery.

For the purpose of avoiding expense of taking depositions to prove the same, it is hereby admitted by defendants to be true that the stubs of certificates issued by the clerk of the district court of Dallas County, Iowa, for school-fund interest paid by various parties in to the clerk of said court, contain the certificates of John Waiford, endorsed
74 thereon in his own handwriting, under dates of January 9th, 11th,

12th, 13th, 16th, and 26th, 1864, and which stubs of certificates aforesaid are found in said clerk's office, and are parts of the papers and files of such office, and represent moneys paid into said office on said days. It is further agreed by the parties in this cause that this stipulation and the facts therein recited may be read in evidence on the hearing of the foregoing entitled cause. Des Moines, Jan'y 29th, 1874.

(Signed) PHILLIPS & PHILLIPS,
Attys. for Compl't.
J. R. BARCROFT,
Atty. for Res'd't.

(Endorsed:) Filed May 21, 1874. George B. Corkhill, clerk.

75 In the United States circuit court, district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR. } In chancery.

For the purpose of saving costs on appeal in the above-entitled cause it is hereby admitted by the defendant that the Government of the United States issued patents to the land in controversy to the complainant, Michael Hurley, and that the said patents were introduced in evidence by the complainant on the trial of the above cause in said court.

(Signed) J. R. BARCROFT,
Atty. for Resp.

(Endorsed:) Filed Sep. 9, 1874. George B. Corkhill, clerk.

76 EXHIBIT A.

Dedimus Potestatem.

Circuit court of the United States, district of Iowa, ss:

To John H. Keatley, of Council Bluffs, Iowa, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority, to examine any and all witnesses who may be brought before you on their corporal oaths, as witnesses in a cause depending in the circuit court of the United States for the district of Iowa, wherein Michael Hurley is plaintiff and James Callanan, jr., is defendant. And, therefore, you are hereby commanded that at certain days and places to be appointed by you for that purpose, you do cause the said witnesses to come before you, and then and there examine them on oath.

That such interrogatories and cross-interrogatories as shall be propounded to said witnesses you shall cause to be written out, and the answers thereto to be inserted immediately following the respective interrogatories; that you cause the whole to be read over to the witnesses and the same to be subscribed by them, and duly sworn to before you; that you take said deposition in accordance with your certificate, which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned; that you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court, at Des Moines, Iowa; that you endorse on the

outside of said envelope thus directed the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

Witness, the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 16th day of April 1873, and in the 97th year of the Independence of the United States of America.

Attest:

[L. S.] (S'g'd) GEORGE B. CORKHILL,
Clerk of United States Circuit Court, District of Iowa.

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded (whether written or oral) to be written out, and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the deposition and returned with them, unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

77 In the United States circuit court for the district of Iowa.

MICHAEL HURDEY, PLFF.
JAMES CALLANAN, JR., ET AL, DEFT'S.

UNITED STATES OF AMERICA,
Dist. of Iowa, ss :

I, John H. Keatley, being first duly sworn, on oath say that I will faithfully discharge the duties of my appointment by said circuit court as special commissioner to take the testimony on behalf of the plff. in the above entitled cause under and by virtue of a dedimus potestatem dated the 16th day of April, A. D. 1873, directed to me. So help me God.

JNO. H. KEATLEY.

78 Sworn to before me and subscribed in my presence by the above named John H. Keatley, this 28th day of April, A. D. 1873.

J. LYMAN,
United States Commissioner.

79 In United States circuit court for district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN ET AL. } In equity.

To said defendant and Barcroft Given & Hammond, his attorneys:

You are hereby notified that the complainant in the above-entitled cause desire the evidence to be adduced therein taken orally; that J. H. Keatley, esq., has been appointed a commissioner in said cause to take

testimony; and that said commissioner has, by an order made in said cause, fixed his office in Council Bluffs, Pottawattamie County, Iowa, as the place, and Tuesday, the 29th day of April, 1873, as the time for taking evidence on the part of complainant in said cause, when and where you can appear and cross-examine the witnesses, if you so desire.

80 PHILLIPS & PHILLIPS,
Attys. for Complainant.

Due service of the within notice accepted this April 19, 1873.
BARCROFT, GIVEN & HAMMOND,
Attys. for Callanan.

In the circuit court United States for district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR., ET AL. } In equity.

In the above-entitled cause I hereby fix Tuesday, the 29th day of April, 1873, as the time, and my office in Council Bluffs, Pottawattamie County, Iowa, as the place for the taking of evidence on the part of said complainant in the above cause, and direct and order that notice of this order be served upon the defendant or his attorneys, on or before April 19th, 1873.

JNO. H. KEATLEY,
Com. & Examiner.

COUNCIL BLUFFS, *April* 17, 1873.

81 In the circuit court of the United States in and for the district of Iowa.

MICHAEL HURLEY, PLFF.,
vs.
JAMES CALLANAN, JR., DEFT'S., ET AL.

Deposition of witnesses produced, sworn, and examined at Council Bluffs, in Pottawattamie County, and State of Iowa, before me, John H. Keatley, a special commissioner, constitu'ed and appointed by virtue of the annexed dedimus potestatem, marked "Exhibit A," to me directed, in an action now pending in the circuit court of the United States for the district of Iowa, wherein Michael Hurley is plaintiff, and James Callanan, jr., et al. are defendants, on behalf of the plaintiff.

E. M. DAVENPORT, being produced, sworn, and examined on the part of the plaintiff, deposed as follows:

82 Interrogatory 1st. State your name, age, residence, and occupation.

Ans. E. M. Davenport is my name. My age is 45 years. I reside in Council Bluffs, Iowa. My occupation is real-estate business.

Int. 2nd. Are you acquainted with the parties to this suit, or either of them; and, if so, how long have you known them, or either of them?

Ans. I know Mr. Callanan only, and have known him for about one year.

Int. 3. Where did you reside and in what business were you engaged on the 4th day of January, 1864, and from that time until the 1st day March, of the same year?

Ans. My residence was in Lewis, Cass County, Iowa; was em-
83 ployed in the county treasurer's office as a clerk to said treasurer from the first of January, 1864, to about the 1st of May of the same year.

Int. 4. Were you in the said treasurer's office on the 4th day of January, 1864; and, if so, state what you know concerning a certain tax-sale held at that time. State where said sale was made and in what manner; state fully.

Ans. I presume I was in the said treasurer's office on the 4th day of January, 1864. To the best of my belief I was.

(Deft. objects to the witness answering the remainder of the last interrogatory: 1st, because it is immaterial; 2nd, irrelevant; 3rd, incompetent, and 4th, not the best evidence; that the records of the sale and the tax-deeds thereon cannot be either contradicted or explained by parol testimony in collateral action, and not in any event as against
84 the deft. James Callanan.)

Ans. There was a tax-sale held that day for the sale of land for delinquent taxes; said sale was made in the treasurer's office in the courthouse at Lewis, Cass County, Iowa. I cannot remember at this time the exact manner in which said sale was conducted.

Int. 5. During what part of that day were you in said treasurer's office, and what were you doing?

Ans. I presume I was there during the business hours of the day. I cannot remember positively what I did do. I don't think I commenced to make out certificates on that day, but might have done so.

Int. 6. Where was the treasurer on that day and what was he doing?

Ans. He was in the office most of the day. I don't remember
85 what particular business he was engaged in.

Int. 7. Did you attend the tax-sale held by the treasurer of said county on the day for which said sale was advertised.

Ans. I did.

Int. 8. Do you know one John Warford? and if so, was he present at the sale on that day.

Ans. Mr. Warford came to Cass County to make purchases for Meads & Reynolds—Orlando Meads and Dexter Reynolds. I saw Mr. Warford while he was there. I cannot state whether it was prior to January 4th, on January 4th, or after January 4th. It might have been on January 4th, 1864. I should not know him if I should see him now.

Int. 9. State if you know whether he made any purchases for
86 Orlando Meads and Dexter Reynolds, or either of them; and, i so, how such sale was made.

(Defendant objects to that part of the last interrogatory commencing with the phrase "and, if so, how, &c," 1st, because it is immaterial; 2nd, irrelevant; 3rd, incompetent, and 4th, not the best evidence; that records of the sale and the tax-deeds thereon cannot either be contradicted or explained by parol testimony in a collateral action, and not in any event as against the defendant James Callanan.)

Ans. He made purchases for both Orlando Meads and Dexter Reynolds. I know this because I made out certificates for both of those men. But just how it was done I cannot remember.

Int. 10. During what portion of the time were you in the treasurer's office from the time you went in there as clerk until the 1st day
87 of March, A. D. 1864. Give us your best recollection.

Ans. I cannot exactly state from memory the time, but presume I was there during the business hours of nearly every day.

Int. 11. State at what business were you employed while you were acting as clerk.

Ans. Most of the time making out certificates of tax-sale, and making the record of the sales.

Int. 12. In what order did you make out these certificates and make the records of sales, and which did you do first.

Ans. I cannot remember.

Int. 13. From what did you make out these certificates of purchase?

(Defendant objects to this interrogatory, for the reasons stated in his objections to interrog. 9.)

88 Ans. I presume I made out these certificates of purchase from the tax-lists of previous years.

Int. 14. State whether you made out, while in the office of said treasurer, these certificates of purchase to Meads & Reynolds for lands purchased at this tax-sale.

Ans. I did—all or nearly all of them.

Int. 15. At what time did you commence making them out, and when did you get through with them?

Ans. I commenced shortly after January 4th, possibly the next day. I think it took me into the month of March, possibly longer.

Int. 16. State, if you know, when these certificates to Meads & Reynolds were delivered, where they were delivered, and to whom, and by whom?

(Deft. objects to this interrogatory, for the reasons stated in his objections to interrogatory No. 9.)

89 Ans. I do not know when I delivered them to Mr. Warford at Adel, Iowa. On further thought, it must have been in the week after the second Sunday in March, 1864.

Int. 17. State if you know when payment was made for those lands purchased by Meads & Reynolds, by whom and to whom, and where and in what manner.

(Deft. objects to this interrogatory, for the same reasons as stated in his objection to interrogatory No. 9.)

Ans. Mr. Warford paid me the balance due on certificates when they were delivered to him at Adel; what that balance was I now cannot tell. There was a settlement made. We squared up for the certificates then delivered. There may have been some delivered afterwards, but I cannot now tell.

90 Int. 18. State, if you know, what the treasurer was doing while you were employed in making out those certificates; whether Mr. Warford was present at the time, and, if so, what part of the time? Give your best recollection.

(Deft. objects to the last interrogatory for the same reasons as stated in his objections to the 9th interrogatory.)

Ans. I presume he was attending to the legitimate business of his office. I presume he was receiving taxes. Mr. Warford was not present all the while. My impression is that Mr. Warford was at Lewis but a day or two.

Int. 19. State, if you remember, whether the board of supervisors of Cass County, Iowa, were not in session a portion of the 4th day of January, 1864, and, if so, whether the treasurer was not absent from his office and in attendance on said board, making a settlement with

91 them during a part of that day that they were in session.

(Def't objected to this interrogatory for the same reasons as stated in his objections to the 9th interrogatory herein.)

Ans. I think they were. I cannot now state about his making a settlement or being absent from the room.

Int. 20. Did you hear the treasurer on the 4th day of January, 1864, or at any other time between that day and the 1st day of March, 1864, offer any lands for sale for taxes?

(Objected to by deft. for the reasons stated by him in his objection to the 9th inter'og. herein.)

Ans. I do not now remember that he offered them for sale.

Int. 21st. State whether you were where you could have heard him if he had.

92 (Deft. objects to this interrogatory, for the reasons stated in his objections to interrogatory No. 9 herein.)

Ans. I was in the office, and presume I could have heard him if he had.

Int. 22. State whether you heard any bids made by Orlando Meads or Dexter Reynolds or by any one in behalf of either of them for lands during the time referred to in interrogatory No. 20.

(Deft. objects to this interrogatory, for the reasons stated in objections to interrogatory No. 9.)

Ans. I do not remember hearing any bids made.

Int. 23. State whether you, as clerk of said treasurer, offered any lands for sale for taxes on the 4th of January, 1864, or at any other time between that day and the 1st day of March, 1864.

(Deft. objects to this interrogatory, for the reasons stated in objections to interrogatory No. 9.)

93 Ans. I do not think I did. I do not remember so doing.

Int. 24. State whether you know anything in regard to an arrangement or understanding by and between Isaac Dickerson, then treasurer of Cass Co., Iowa, and Orlands Mead and Dexter Reynolds, through their agent, John Warford, in reference to the purchase of lands for taxes at such sale, and, if so, state fully what you know concerning it.

(Deft. objects, for the same reason as stated in his objection to interrogatory No. 9.)

Ans. Mr. Warford was there as their agent during the time he was there, or after he left it was understood that Mead & Reynolds were the purchasers of all the lands on which there were not over two or three years' delinquent tax due thereon, except it might be some few pieces wanted by residents of Cass County or by parties in and

94 about the place. How this arrangement was made between Mr. Dickerson as treasurer and Mr. Warford as the agent of Meads & Reynolds I am not now able to state, and I know this fact more from the results connected with my labors in the office after January 4th, 1864, than from anything I remember as having taken place between Mr. Dickerson and Mr. Warford at the time Mr. Warford was there.

Int. 25. State whether this understanding existed at the time you commenced making out these certificates. Give your best recollection.

(Objected to by deft. as to interrogatory No. 9 herein.)

Ans. I think it did.

Int. 26. State whether those certificates were made out in accordance with this understanding.

(Objected to by deft., for the same reason as stated in his ob-

95 jections interrogatory 9th.)

Ans. I think they were.

Int. 27. State who made the selections for Meads & Reynolds, in accordance with this understanding.

(Objected to by deft., for the same reason as stated in his objection to

the 9th interrogatory, and objected to on the further grounds that it assumes that selections were made.)

Ans. I cannot state.

Int. 27. State whether if those lands had been offered at public outcry by the treasurer, parcel by parcel, and so bidden upon by Meads & Reynolds, or either of them, or by any one for them or for either of them, you would remember it?

(Objected to for the same reasons as stated in the objection to interrogatory 9th.)

Ans. I think I should, but it is possible that it might have been
96 done and I not remember it.

Int. 28. State if you know whether there was any understanding in regard to the purchase of lands by residents at that sale, and, if so, what was it?

(Objected to by deft., for the same reasons as stated in objections to interrogatory 9th.)

Ans. I do not know what the understanding was, as in a former answer my memory in regard to the results was that the residents had such pieces as they wanted.

Int. 29. Was it the understanding that Mead & Reynolds should not compete with residents or with those about the office who desired to purchase lands for themselves or their friends?

(Objected by deft., for the same reasons as stated in objections to 9th interrogatory.)

Ans. I cannot say positively what the understanding between the agent of Meads & Reynolds and Mr. Dickerson was. The results
97 showed that parties about town had what they wanted.

Int. 30. Give your best recollection as to whether there was any understanding such as mentioned in last interrogatory?

(Objected by deft., for same reasons as stated in objections to 9th interrogatory.)

Ans. I don't know that there was any understanding, but there might have been.

Int. 31. State whether you purchased any lands at said sale, and, if so, on what day, for whom, and give the amount that you invested for each person, as near as you can recollect.

(Objected to by deft., for the same reasons as stated in objections to 9th interrogatory.)

Ans. I purchased for W. D. Wheeler & M. D. Bartlett. Their certificates were dated January 4, 1864. I cannot remember the amount; I cannot approximate the amount. It was not very large.

98 Int. 32. State who marked the lands on the books of the office, as sold to Wheeler and Bartlett?

(Objected to by deft., for the same reasons as stated in objections to 9th interrogatory.)

Ans. I cannot do so at this time.

Int. 33. State whether you had an understanding with the treasurer in regard to the purchase of lands at that sale for yourself or for others, and, if so, what was it?

(Objected to for the same reasons as stated in objections to the 9th interrogatory.)

Ans. I don't remember that I had any understanding with him, or if so, what it was.

Int. 34. Were these lands purchased by you offered at public outcry?

(Objected to for the same reasons as stated in objections to the 9th interrogatory.)

Ans. I do not know.

99 Int. 35. State whether you heard any conversation between Isaac Dickerson, treasurer of Cass County, Iowa, and John Warford, agent of Meads & Reynolds, at the time he was in Lewis, in said county, concerning the tax-purchases he was about to make, or then made, or had made, for Meads & Reynolds; and if so, state what it was.

(Objected to for the same reasons as stated in objection to 9th interrog.)

Ans. I do not now remember what was said, but I presume I heard them talk the matter over.

Int. 35. State whether you saw or knew anything about any correspondence between said Dickerson and said Warford in regard to said purchases; and, if so, state what it was.

(Objected to, for the same reasons as stated in objection to the 9th interrogatory.)

Ans. I do not now remember seeing any correspondence in regard to the matter.

100 Int. 36. State whether you had any correspondence with Mr. Warford in regard to it; and, if so, what was it?

(Objected to, for the same reasons as stated in deft.'s objections to int. 9.)

Ans. I do not remember corresponding with Mr. Warford in regard to the matter.

Int. 37. Did you have any conversation with said Warford or with said Dickerson in regard to the matter; and, if so, state what was it?

(Objected to by deft., for the same reasons as stated in deft.'s objections to interrogatory No. 9.)

Ans. I presume I did, but do not remember what it was. I cannot remember anything about it, only the general results.

Int. 38. State whether, during the month of January, 1864, the treasurer of Cass County, Iowa, offered any land at public outcry, or

101 in any public manner, for sale for taxes.

(Objected to by deft., for the same reasons as stated in deft.'s objections to interrogatory No. 9.)

Ans. I do not remember that he did.

Int. 39. Would you remember it if he did in your presence?

(Objected to by deft., for reasons stated in deft.'s objections to int. No. 9.)

Ans. I should suppose that the offering of said land and the calling of it out would have made an impression upon my mind that I should remember it. I cannot remember hearing it called, although it might have been all called off.

Int. 40. Were you at work in the treasurer's office at the time said Warford was in Lewis?

(Objected to by deft., for reasons stated in deft.'s objections to int. No. 9.)

Ans. I cannot state positively if he was there on the 4th day of

102 January, 1864. I was in the office during business hours. If it was after the 4th day of January, 1864, I must have been in the office. If it was prior to the 4th day of January, 1864, I might not have been in the office while he was there all the time.

Int. 41. At what place in Lewis did you see Mr. Warford?

(Objected to by deft., for reasons stated in deft.'s objections to interrog. No. 9.)

Ans. I remember seeing him at the hotel and holding a conversation with him of some length in the evening; also seeing him at the treasurer's office.

Int. 42. How long did he remain in the treasurer's office?

(Objected to by deft., for the reasons stated in deft.'s objections to interrog. No. 9.)

Ans. I don't remember.

Int. 43. Give us your best recollection.

103 (Objected to by deft., for the reasons stated in deft.'s objections to int. No. 9.)

Ans. I cannot remember anything about the length of time he was at the treasurer's office.

Int. 44. State whether it is not the fact that all of the lands entered on the books of the office as sold as of the 4 day of January, 1864, were so entered, under an arrangement or understanding with the county treasurer to take such lands as you and other parties around Lewis wanted, and that Meads & Reynolds were to have the balance.

(Objected to, for the reasons stated in the deft.'s objections to interrog. No. 9.)

Ans. I cannot state that that was the fact, but results show that we had what we wanted, and they got the balance.

Int. 45. State whether you so understood it at that time.

104 (Objected to by deft., for the reasons stated in the deft.'s objections to interrogatory No. 9.)

Ans. I cannot remember how I understood it at that time.

Int. 46. Did you or did you not, in making out the certificates for Meads & Reynolds, take what you wanted for your friends or clients, and put the balance in the certificates of Meads & Reynolds?

(Objected to, for the reasons stated in the defendant's objections to int. No. 9.)

Ans. I don't remember how it was. My impression now is that I had all I wanted for myself and friends. It is so long that I cannot remember positively.

Int. 47. State your best recollection in regard to it.

(Objected to by deft., for the reasons stated in deft.'s objections to int. No. 9.)

105 Ans. It is now nine years since I left that office. I think I left the time, either that summer or the summer after; having been away from there and the books out of my sight, it is hard to bring the facts of that sale to my mind; I have no recollection about it.

Int. 48. Did you enter up in the registry of tax-sales for the county treasurer the record of this sale?

(Objected to, for the reasons stated in deft.'s objections to int. No. 9.)

Ans. I think I did.

Int. 49. From what source was this record made?

(Objected to, for the reasons stated in deft.'s objections to interrogatory No. 9.)

Ans. The facts were derived from the tax-list of the previous years. I cannot remember whether I made the certificates first or the records of sales first, or whether I made the record from the certificates

106 or the certificate from the record.

Int. 50. Was there any record made at the time of the sale?

(Objected to, for the reasons stated in the deft.'s objections to interrog. No. 9.)

Ans. I don't remember that there was.

Int. 51. State your recollection in regard to the treasurer's being absent from the office on the 4th of Jan'y, 1864, and days following during that week, in attendance upon the board of supervisors.

(Objected to, for the reasons stated in deft.'s objection to int. No. 9.)

Ans. I think Mr. Dickerson was with the board during some portion of that week, but I do not remember positively; I cannot remember particularly as regards the 4th day of January, 1864.

Int. 52. State whether there was any competition at this tax-sale.

107 (Objected to, for the reasons stated in the deft.'s objections to int. No. 9.)

Ans. Don't remember that there was.

Int. 53. State whether you heard this Warford bid for any lands at any time from Jan'y 4, 1864, to March 1st, 1864.

(Objected to, for the reasons stated in the deft.'s objections to int. No. 9.)

Ans. I do not remember that I did.

Int. 54. State whether there was any understanding or anything said at the time that these lands wanted by you or other parties should be entered up as sold without opposition of Meads & Reynolds or their agent.

(Objected to, for the reasons stated in deft.'s objections to int. No. 9.)

Ans. I cannot remember anything about that.

Int. 55. At the time you were entering up these lands as sold

108 to Meads & Reynolds and making out the certificates, were not such of the unsold lands as were wanted about the office taken out and the balance given to Meads & Reynolds?

(Objected to, for the reasons stated in deft.'s objections to int. No. 9.)

Ans. It might have been so, but I cannot remember just how it was.

Int. 56. Did you not make out these certifiates from the advertisement, commencing at one corner of the county for one of these parties and going through the list in rotation until you got to all the land Warford wanted for him, and then commencing in another corner of the county for the other and going through in the same manner until you got all that Warford wanted for him?

(Objected to, for the reasons stated in deft.'s objection to int. No. 9.)

Ans. I think I commenced in the northeast part of the county

109 and made out all the certificates in that township, before I made out any in the next, and so on, going from east to west, and working south. I cannot state whether I made out all for one before taking up for the other or not. I cannot tell whether I went by the advertisement or by the tax-book.

Int. 57. What is your recollection as to when you commenced making certificates to Meads & Reynolds?

(Objected to, for the reasons stated in deft.'s objections to int. No. 9.)

Ans. Soon after January 4th, 1864; possibly on the 5th; I am not positive though.

Int. 58. State whether, during the month of January, 1864, you were not engaged exclusively in making out those certificates; and, if not, state what portion of the time you were otherwise employed, and at what?

(Objected to, for the reasons stated in deft.'s objections to int. No. 9.

110 Ans. I think after I got fairly started I did but little else. Just when I commenced I do not remember.

Int. 59. State your best recollection as to which was done first, making the entry in the registry of sales or making out the certificates.

(Objected to, for the reasons stated in deft.'s objections to int. No. 9.)

Ans. I cannot. I have no remembrance about it.

Int. 60. Do you know whether this Warford paid any money on his purchases at the time he was in Lewis?

(Objected to, for the reasons stated in deft.'s objections to int. No. 9.)
Ans. I think he did.

Int. 61. Were there any certificates delivered to Warford at the time he was in Lewis?

(Objected to, for the reasons stated in deft.'s objections to int. No. 9.)

111 Ans. I don't think there was; but can't remember.

Int. 62. State whether the tax-sale was adjourned from day to day by the treasurer, on and after the 4th day of January, 1864.

(Objected to, for the reasons stated in deft.'s objections to No. 9th int.)
Ans. I don't know; I can't remember anything about it.

Int. 63. State whether, during the time in which you were engaged in making out these certificates the treasurer was not engaged almost constantly in receiving taxes.

(Objected to, for the reasons stated in defendant's objections to the 9th interrogatory.

Ans. I think he was most of the time.

Int. 64. State whether you saw or knew of any person during the time from January 4th to March 1st, 1864, who professed to act for or

112 in behalf of Meads & Reynolds or either of them, except John Warford.

(Objected to by the deft., for the reasons stated in his objections to the 9th interrogatory.)

Ans. I don't remember whether I did.

Int. 65. State as near as you can the population of Lewis during January, 1864.

(Objected to by the deft., for the reasons stated in his objections to the 9th interrogatory.)

Ans. I have no means of knowing particularly, but I should think about five hundred.

Int. 66. State whether you had any conversation with said Warford or with Dickerson, or with either of them, in regard to the arrangement or understanding referred to by you in your former testimony; and, if so, state where such conversation were had, if you can remember it with whom, and give us your best recollection what such conversation were.

113 (Objected to by deft., for the reasons stated in objections to 9th int.)

Ans. I presume I did, but I don't remember anything about it.

Int. 67. Give us your best recollections as to what instructions or directions were given you by said treasurer with regard to said sale.

(Qbjected to, for the reasons stated in deft.'s objections to 9th int.)

Ans. I presume he gave me instructions how to make it up, but I cannot remember what it was, where it was, and how it was.

Int. 68. State how the sales were made to residents, whether on bids or lists handed in by them or otherwise.

(Objected to, for the reasons stated in objections to the 9th interrog.)

Ans. I cannot remember.

Int. 69. State whether you did any bidding at this sale for the

114 parties for whom you purchased lands, or whether they were marked off to you without any bidding; give your best recollection.

(Objected to, for the reason stated in deft.'s objections to the 9th interrogatory.)

Ans. I cannot remember that I bid on a single piece. I don't remember that I did or did not; I might have done so.

Int. 70. Do you know any other matter or thing in relation to this

sale? If so, declare the same fully as though you had been particularly interrogated thereto.

Ans. I cannot think of any other facts that I could add in regard to the sale.

Int. 71. How did you come to go down to Adel, Iowa, to deliver these certificates to Warford?

(Objected to by the deft., for the reasons stated in his objections to int. No. 9.)

115 Ans. My wife had been East during the winter, and I was going to Des Moines to meet her. Mr. Dickerson, as county treasurer, had some returns to make to the State treasurer, some money and funds; he sent the tax-certificates by me to Adel, and I paid a portion of the proceeds over to the State treasurer at Des Moines. I do not know why Mr. Dickerson sent the certificates there in place of letting Mr. Warford come after them.

Int. 72. State whether it was not a part of the original understanding between Warford and the treasurer that they should be delivered there at Adel.

(Objected to, for the reasons stated in deft.'s objections to int. 9.)

Ans. Not that I remember; if I ever knew it has gone from me.

Int. 73. State the amount you paid the State treasurer at that time; whether you got all the money you paid the State treasurer from

116 Warford at that time; how much you got from Warford; approximate as near as you can to the amount.

(Objected to, for the reasons stated in deft.'s objections to int. No. 9.)

Ans. I cannot state the amount. I paid the State treasurer all I got from Warford. I got more from Warford than I paid the State treasurer. I cannot state anything about except that it was quite a large amount.

Int. 74. Was it as much as $3,000?

(Objected to, for the reasons stated in deft.'s objections to int. No. 9.)

Ans. Cannot remember; it might have been more.

Int. 75. Was it paid on account of Meads or Reynolds, or both?

(Objected to, for the reasons stated in the deft. objections to int. No. 9.)

Ans. Both.

117 On cross-examination the witness, E. W. Davenport, testified as follows:

Cross-int. 1. Can you state that the land in controversy, namely, N. ½ N. W. 19, 74, 35; S. W. 7, 74, 35; N. W. 7, 74, 35; N. ½ N. E. 3, 74, 35; N. ½ N. W. 3, 74, 35; S. ½ S. E. 8, 74, 34; W. ½ S. W. 18, 74, 34; S. ½ S. E. 20, 77, 36; N. ½ N. W. 25, 75, 36; N. E. N. W. 3, 75, 36; S. ½ N. E. 11, 74, 36; N. ½ N. W. 4, 77, 36; W. ½ S. W. 19, 76, 37; W. ½ N. W. 19, 76, 37; S. E. N. W. 19, 76, 37; S. W. N. W. 29, 76, 35, was not sold on the 4th of January, 1864, by the treasurer of Cass County, Iowa, at public outcry, to Reynolds and Meads respectively, part to the one and part to the other?

118 Cross-int. 2. Can you state that there was any agreement or combination among the bidders at that sale, that if Warford would not bid against them for any land they wanted they would not bid against any land he wanted?

(Objected to by the plaintiff, for the reason that it assumes that there were bidders at the sale, when there were none.)

Ans. I cannot.

Cross-int. 3. Was all the land delinquent for taxes that was advertised for sale on the 4th of January, 1864, sold at the January, 1864,

sale, or was a part adjourned to some subsequent month after that sale closed.

(Objected to by plaintiff, as, 1st, irrelevant; 2d, immaterial; 3d, incompetent; 4th, not the best evidence; and 5, calling for matters not referred to in the examination-in-chief.

Ans. No; it was not all sold; part was adjourned to a subsequent date.

119 Cross-int. 4. What was Warford's business there at that sale, if you know?

(Objected to as incompetent.)

Ans. He was there to buy the land offered for delinquent tax.

Cross-int. 5. Did you buy any land at that sale; and if so, do you still own it, or have you disposed of it?

Ans. I did buy land at that sale. I think it is all disposed of. I do not know but what I have a slight interest in some town lots.

Cross-int. 6. State if the treasurer and Warford and yourself, and other persons who bought land at said sale, or any of them, so far as you know or believe, did not do everything that you or they thought was necessary to make a fair and legal public sale of the land that each one bought.

(Objected to as irrelevant, immaterial, incompetent, & calling for *our* opinion on matters of law as well as matters of fact.)

120 Ans. I certainly thought the sale was correct, or I should not have made purchases for myself or friends. I did not know at the time of anything being done which I supposed to be wrong.

Cross-int. 7. Was it intended to have a fair public sale, and did any and all persons have an opportunity to bid at said sale if they wanted to?

(Objected to as incompetent.)

Ans. I think it was designed to have a fair sale. I knew of no one wanting to bid that did not have a chance.

Cross-int. 8. Do you know whether Warford wanted to purchase any land that was delinquent more than two or three years; and if you do, state what you know about it.

(Objected to as immaterial, irrelevant, and incompetent.)

Ans. I think he objected to purchasing those having over three
121 years' delinquent taxes on them. I don't remember the reason why.

Not being able to complete the taking of these depositions by reason of the lateness of the hour in the night of the 29th of April, A. D. 1873, I adjourn the further taking of the same at the request of the deft., James Callanan, until to-morrow morning, April 30th, at 8 o'clock a. m.

Pursuant to the above adjournment, at the time fixed in said adjournment, to wit, at 8 o'clock a. m., April 30, I continued taking said depositions as follows:

Said witness being re-examined, says:

Int. 1st. Have you any recollection as to the particular lands marked on the books as sold to Meads & Reynolds, or either of them, or included in the certificates to them, or either of them, or that the lands referred to in cross-int. No. 1 are included in those so marked or entered in the certificates?

122 Ans. I have no recollection.

Int. 2. If all the land as marked to Meads & Reynolds, or either of them, or any considerable portion of them had been publicly offered for sale and openly and publicly bidden upon by said Warford on the 4th

day of January, 1864, would you not have known it at the time, and would you not have some recollection of it now?

(Objected to, for the reason stated in objection to int. No. 9 in chief, and for the additional reason that it asks for an opinion, and because it is a repetition.)

Ans. It seems to me now if they had all been regularly offered it would have made an impression on my mind, and I should have remembered something about it. At this time I cannot now remember of a single piece being offered, although it is so long ago, and the thing is so completely passed from my mind I am not willing to swear that it
123 was not offered. I think I would have known it at the time of the lands sold to Meads & Reynolds had been previously offered.

Int. 3. In answer to cross-interrog. No. 3 you say the sale was adjourned to a further time; where was such adjournment made, and to what time, and how was it made?

(Objected to by deft. as in prior interrogatory in re-examination.)

Ans. I cannot now state when and to what time it was made nor how it was made.

Int. 4. Was this adjournment made on the 4th day of January, 1864?

(Objected to by defendant for reasons as stated in objection to 2d int. in the re-examination.)

Ans. I presume it was, but I cannot swear that it was.

Int. 5. For how long a time was it adjourned—give us your best recollection.

(Objected to same as last.)

124 Ans. I think into April, 1864; possibly it might be May of the same year.

Int. 6. State whether notices of such adjournment or a notice thereof was posted in the office at the time of the adjournment.

(Objected to same as last.)

Ans. I do not remember in regard to it.

Int. 7. In answer to cross-int. 6th you say that neither yourself, the treasurer, Warford, nor any other persons purchasing at said sale, so far as you knew, did anything which you supposed to be wrong; and in answer to cross-int. No. 7 you say it was designed to have a fair sale; state what was done by the treasurer to that end, and from what do you infer such intent.

125 Ans. In answering those interrogatories I came to the conclusions I made from the fact that I purchased for myself and for my friends. Had I supposed anything to be wrong about the sale at the time, I do not think I should have made those purchases.

Int. 8. Were not the lands that were to go to Meads & Reynolds selected as the certificates were made out?

(Objected to, for the same reasons as stated in objections to interrogatory 9th in-chief, and for the additional reason that the witness has been asked the same question and is not a proper matter of cross-examination, going over the same ground again.)

Ans. It is so long ago that I cannot swear positively about it.

Int. 9. Give us your best recollection.

(Objected to, same as last objection.)

Ans. I cannot remember that that was the fact. It might have
126 been so, but I have no remembrance about it.

Int. 10. State whether at the time Warford was in Lewis there was understanding between him and yourself and the treasurer that residents and yourself and others about the office were to have what

you wanted for yourselves and friends, and the balance be marked as sold to Meads & Reynolds, & certificates given therefor.

(Objected to, for reasons stated in objections to int. 9th, and because not a proper re-examination has given to the same matter before.

Ans. I so understood it at the time. I went to work to make out certificates, but I cannot state positively that I so understood it at the time Mr. Warford was there. I have no positive impression, or I could swear to it.

Int. 11. What do you think in regard to it?

(Same objection as to the last.)

127 Ans. I think Mr. Warford and Mr. Dickerson had some arrangement about it when I commenced work, and I think Mr. Dickerson told me how it was when I commenced work at the certificates.

Int. 12. Do you think that you made out those certificates and entered up the lands on the registry of sales according to this arrangement and under the directions and instructions of said treasurer?

(Objected to same as before, and because it assumes there was an arrangement, when witness states that he does not know that there was such an arrangement.)

Ans. I was at work for Mr. Dickerson and presume I lived up to his instructions in every respect. I do not know what the arrangements between Mr. Dickerson & Warford were, but I think I lived up

128 to the instructions of Mr. Dickerson.

Int. 13. How do you know what Warford's business at Lewis was; and how do you know that he did not want land that had more than 3 years' taxes due upon it? Give us the source of your information.

(Objected to.)

Ans. I think I knew that his business at Lewis was to purchase lands at the tax-sale from conversations with the treasurer, and that I delivered the certificates after they were made out to him. I cannot state how I knew that he did not want lands that had more than three years' taxes due upon it, except that is my positive impression; and I think there was none put in his certificates that had over 3 years' on it.

(Signed) E. M. DAVENPORT.

Sworn to before me, and subscribed in my presence by the

129 above-named E. M. Davenport, this 30th day of April, A. D. 1873.

(Signed) JNO. H. KEATLEY,
Special U. S. Commissioner & Examiner.

UNITED STATES OF AMERICA,
District of Iowa ss:

I, John H. Keatley, special commissioner, appointed by the circuit court of the United States, under and by virtue of dedimus potestatum hereto annexed and marked "Exhibit A," do her'by certify that in pursuance of the same, I caused to come before me at my office in Council Bluffs, Iowa, on the 29 day of April, A. D. 1873, E. M. Davenport, the only witness required by the plff., Michael Hurley, to be examined before me in the cause herein; was then and there by me duly sworn and examined upon the foregoing interrogatories propounded by James Callanan, jr., one of the defendants herein, in person; that the examination of said wit-

130 ness, E. M. Davenport, was by me reduced to writing and, after being by me read over to said witness, the same was subscribed

and sworn to by him in my presence, and his deposition is now herewith returned. And I further certify that the plaintiff, Michael Hurley and his solicitors, John S. Monk, esq., were present during said examination and conducted the same on behalf of the plff., and that James Callanan, jr., was present and cross-examined said witness on behalf of the defendants; that the foregoing deposition of E. M. Davenport was sworn to before me and subscribed in my presence by him on the 30th day of April, A. D. 1873, at my office in Council Bluffs, Iowa.

Given under my hand at Council Bluffs, in the county of Pottawattamie, State of Iowa, this 30th day of April, A. D. 1873.

(Signed) JNO. H. KEATLEY,
Commissioner to take Depositions.

131 Commissioner's fee: 122 folios, $30.60; 1 subpœna, .25; order, .25—31.10.

Pd. by M. Hurley, plff.

JNO. H. KEATLEY,
Commissioner.

(Endorsed:) Filed May 28, 1873. George B. Corkhill, clerk.

132 *Dedimus protestatem.*

Circuit court of the United States, District of Iowa, ss:

To H. T. Sharp, of Atlantic, Cass County, Iowa, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed and by these presents you are invested with full power and authority to examine any and all witnesses who may be brought before you on their corporal oaths, as witnesses in a cause pending in the circuit court of the United States for the district of Iowa, wherein M. Hurley is plaintiff and James Callanan, jr., et al. are defandant', on the part of the plff. And, therefore, you are hereby commanded that at certain days and places to be appointed by you for that purpose, you do cause the said witnesses to come before you and then and there examine them on oath; that the interrogatories and cross interrogatories as may be propounded to them you shall cause to be written out, and the answers thereto to be inserted immediately following the respective interrogatories; that you cause the whole to be read over to the witnesses and the same to be subscribed by them, and duly sworn to before you; that you take said deposition in accordance with your certificate, which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned; that you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court at Des Moines, Iowa; that you endorse on the outside of said envelope thus directed the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 15th day of March, 18 , and in the 97th year of the Independence of the United States of America.

Attest:

[L. S.] (S'g'd) GEORGE B. CORKHILL,
Clerk of United States Circuit Court, District of Iowa.

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded (whether written or oral) to be written out and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

All exhibits produced before the person taking the deposition or proved or referred to by any witness, or correct copies thereof, must be appended to the deposition and returned with them, unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

133 In the circuit court United States for district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR., & ANOTHER. } In equity.

In the above cause it is hereby ordered that Thursday the 3rd day of April, 1873, be fixed for the taking of depositions on the part of the complainants at my office, in Atlantic, Cass County, Iowa, and that notice thereof be served on counsel for defendant as early as the 29th day of March, 1873.

Given under my hand March 28th, 1873.

H. T. SHARP,
Commissioner.

134 In the circuit court United States, district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR., ET AL. } In equity.

To said defendants and their attorneys:

You are hereby notified that the complainant in the above-entitled cause desires the evidence to be adduced in said cause to be taken orally, and that in pursuance of an order of the commissioner in this, behalf made the complainant will on the 3rd day of April, A. D. 1873, between the hours of nine o'clock a. m. and six o'clock p. m. of said day proceed to take the depositions of his witnesses in said cause before H. T. Sharp, esq., commissioner of said court, at his office in Atlantic in the county of Cass, Iowa, and continue the taking of the same
135 from day to day in the order in which such commissioner may direct.

MICHAEL HURLEY,
Complainant.
By PHILLIPS & PHILLIPS,
His Attys.

Service of the above notice accepted this March 29th, 1873.
BARCROFT, GIVEN AND HAMMOND,
Attys. for James Callanan.

136 Circuit court of the United States, district of Iowa.

M. HURLEY, PLFF.
agst.
JAMES CALLANAN, JR., ET AL., DEFTS.

Depositions of witnesses produced, sworn, and examined at Atlantic, in the county of Cass, and State of Iowa, before me, H. T. Sharp, commissioner, in pursuance of the annexed dedimus to me directed in an action now pending in the circuit court of the United States, district of Iowa, wherein M. Hurley is plaintiff and James Callanan, jr., et al. are defendants, on behalf of the plaintiff.

ISAAC DICKERSON, of lawful age, being produced, carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

137 Interrogatory 1st. State your name, age, residence, and occupation?

Answer. My name is Isaac Dickerson. My age is forty-two years. My occupation a real-estate agent. My residence Atlantic, Cass County, Iowa.

2nd int. How long have you resided in Cass County, Iowa?

Ans. Since June, 1856.

3rd int. What position, if any, did you hold in said county, in January, 1864, and during what time did you hold it?

Ans. I was county treasurer from April, 1857, to January, 1st, 1866.

4th int. State whether or not, as such treasurer, you conducted a tax-sale in said county purporting to have taken place on the 4th of January, 1864.

138 Ans. I did, if the records show that such a sale took place.

5th int. State whether at such a sale a large body of land was marked off as sold to D. Reynolds and O. Meads. State how that sale was conducted, what portion of the county was marked off to D. Reynolds and what portion to O. Meads, and the amount of money invested by each.

(Objected to by deft. as immaterial & irrelevant, incompetant, and not the best evidence, if the evidence sought to be obtained by this question is for the purpose of showing or trying to show that there was no sale of that land in controversy for taxes; it is not the best evidence. The records of the office of the county treasurer must be introduced, or certified copies of them, for that purpose; that parol evidence is not admissible to prove that there was no sale, nor to contradict

139 the records of the sale made by the treasurer. 2nd. If it is to show or tend to show that the sale was irregular or informal, then it is immaterial and irrelevant, the statute and the deed of the treasurer being conclusive of the manner and the regularity of the sale. 3rd. If it is for the purpose of showing or tending to show fraud in the sale by the purchaser or treasurer then it is inadmissable, irrelevant, and improper as to the defendant Callanan, he being a bona fide purchaser for value; and, 2nd, because parol evidence is inadmissable and cannot be allowed to explain or contradict the record of sale and deed made thereon in a collatteral action or proceeding; if the records do not show the facts or are er'onious, proceedings must first be taken to correct or reform the record; that as long as the records stand they are to control the case.

140 The plaintiff objects to the defendant Callanan incumbering

the record with lengthy arguments under the pretense of objections, and on the ground that it is not the manner prescribed by the rules of evidence for making objections.)

Answer. It having been over nine years since that sale was made, I cannot state how large an amount was sold to any parties, nor can I state when they commenced or the amount of money invested only as the records will show; and in regard to conducting the sale, I cannot now state just the form it was conducted in; but it was the intention to conduct it in the form prescribed by law.

6th int. I will ask you, Mr. Dickerson, to approximate as near as you can to the amount invested by Dexter Reynolds and O. Meads, each, at this sale in January, 1864.

141 (Objected to by the defendant as not the best evidence and immaterial, & for the reason before stated.)

Ans. It was somewhere from seven to ten thousand dollars. The records will show this was the amount invested by both parties.

7th int. State whether either of the parties referred to in your last answer were present at the time of the sale to them.

(Objected to by the defendant for the reasons state' in objections to interrogatory No. 5.)

Answer. They were not there either of them in person.

Int. 8. I will asked you whether all the land marked off to Dexter Reynolds, as sold, was sold on that day—4th of January?

142 (Objected to by the defendant, for the reasons given in *in* objections to interrogatory No. 5.)

Answer. The sale was opened that day and continued right along under that date until it was closed.

Int. 9. In what part of the county did you commence to sell?

(Objected to by the deft., for reasons given in objections to interrogatory No. 5.)

Ans. I can't say, only as the records will show.

10th int. I will ask you whether you, previous to the time of this sale, had any correspondence with said Reynolds and Mead, or either of them, in regard to the purchase of land at tax-sale in this county.

(Deft. interposes same objection as in interrogatory No. 5.)

Ans. I didn't know there was any such persons in existence previous to the sale.

143 11th int. I will ask you whether, since the time of this sale, you have acted as agent for said Reynolds and Mead, or either of them; and, if so, which?

(Objected to by deft., as immaterial and irrelevant.

Ans. I never acted as agent for them, or either of them, at any time.

12th int. How long after this sale was it that you made out the certificates of purchase for said Meads and Reynolds?

(Objected to by deft. for reasons stated in interrogatory No. 5.)

Ans. The certificates were commenced at once and made out as soon as they could be in the regular course of business.

13th int. When, where, to whom, and how were they delivered?

(Objected to by deft., for same reasons as in int. No. 5.)

144 Ans. In answer to when, I would say they were delivered after they were made out, but as to the time I can't state. They were delivered to the agent of Meads and Reynolds. I do not recollect where, but suppose at the treasurer's office.

14th int. By whom were they delivered?

(Obj. to by deft., for reason in int. No. 5.)

Ans. By me or my clerk.

15th int. Do you not know whether it was you or your clerk?
(Same obj. by deft. as above.)
Ans. It having been so long ago, my recollection is not clear upon that point.
16th int. State your recollection in regard to it.
Ans. My recollection is that my clerk, E. M. Davenport, was going to Des Moines, and at the request of the agent of Meads
145 & Reynolds he delivered at least a portion of them to him at Adel. I cannot reccol'ect whether all or not.
17th int. About what time was this?
(Same obj. by deft. as stated to interrogatory No. 5.)
Ans. I can't state the date; it was as soon as the certificates were made out, which was done in the regular course of business.
18th int. Give us your best recollection as to how long it was after the 4th of January, 1864, at the time of sale.
(Same obj. by deft. as in No. 5.)
Ans. My recollection is they were delivered as soon as the certificates were made out; it would probably be six weeks or such a matter after the 4th of January when the certificates were made out; perhaps longer.
146 19th int. Is it your best recollection that those certificates were delivered as late as six weeks after the 4th of January, 1864?
(Same obj. by deft. as in int. No. 5.)
Ans. They were delivered as soon as they were made out, and it would take six months I should think; it might have been a week or two longer, or not quite so long.
20th int. Is it your recollection that the certificates were all delivered at the same time to O. Mead and Dexter Reynolds?
(Same obj. by deft. as in int. No. 5.)
Ans. I think probably there was two deliveries.
21st int. Have you any reccollection of delivering any of these certificates at any other time or place than that made at Adel by your clerk?
(Same obj. by deft. as in int. No. 5.)
147 Ans. My impression is that a portion of them were delivered at my office, (the treasurer's office.)
22nd int. By whom and to whom were those delivered at your office?
(Same obj. by deft. as in int. No. 5.)
Ans. If there were any delivered at my office, they were delivered by either myself or clerk to the agent of Mead & Reynolds.
23rd int. Who was his agent?
(Same obj. by deft. as in int. No. 5.)
Ans. John Warford.
24th int. How long after the 4th of January was it that they were delivered at your office?
(Same obj. by deft. as in int. No. 5.)
Ans. I do not reccollect. If there was any delivered at my office they were delivered previous to those delivered at Adel; I can't say
148 how long; it may have been two or three weeks, if there was any delivered.
25th int. Were there any delivered earlier than two weeks?
(Same obj.)
Ans. I don't remember.
26th. int. Were they delivered in your presence?
(Same obj. by deft. as in int. No. 5.)
Ans. If any were delivered at my office they were probably delivered in my presence.

27th int. Can you say that they were delivered in your presence from memory?

(Same obj. by deft. as in int. No. 5.)

Ans. I cannot say positively that there was any delivered at my office. I have an impression that there were some delivered at my office, and if such delivery was made then it would be very apt to be by me and in my presence.

149 28th int. What is your reccollection as to the portion of the land covered by the certificates delivered at your office?

(Same obj. by deft. as in int. No. 5.)

Ans. If there was any certificates delivered at my office, I haven't a very definite impression as to the amount; it might have been an eight'; it might have been $\frac{1}{4}$ or more.

29th int. Will you state what proportion of this sum of from seven to ten thousand dollars was invested in lands at this tax-sale by Dexter Reynolds and what portion by O. Mead?

(Same obj. by deft. as in int. No. 5.)

Ans. I don't know.

30th int. State as near as you can.

(Same obj. by deft. as in int. No. 5.)

Ans. It might have been nearly equally divided, and there
150 might have been two hundred dollars difference, and there might have been two thousand dollars difference.

31st int. Give us your best judgment as to the sum invested by each.

(Same obj. by deft. as in int. No. 5.)

Ans. I haven't any best reccollection about it. I never thought about it. One may have invested two hundred dollars more than the other, and one may have invested two thousand dollars more than the other, and I can't tell which.

32nd int. Can you say that the difference in the amount invested by each did not exceed two thousand dollars?

(Same obj. by deft. as in int. No. 5.)

Ans. I cannot.

33rd int. Give us your best judgment as to whether it did or did not.

151 (Same obj. by deft. as in int. No. 5.)

Ans. I have no best judgment about it.

34th int. To whom were these certificates embracing the land marked off on the sales-book as sold to O. Mead delivered?

(Same obj. by deft. as in int. No. 5.)

Ans. To O. Mead's agent, John Warford.

35th int. To whom were these certificates, embraced the lands marked off on the sales-books as sold to Dexter Reynolds delivered?

(Same obj. by deft. as in int. No. 5.)

Ans. To Dexter Reynold's agent, John Warford.

36th int. Was it the same person to whom O. Mead's certificates were delivered?

(Same obj. by deft. as in int. No. 5.)

Ans. It was.

152 37th int. Did this same John Warford act as the agent of both Orlando Mead and Dexter Reynolds throughout the entire transaction relating to these tax-sales?

(Same obj. by deft. as in int. No. 5.)

Ans. He did.

38th int. State when, where, by whom, and how payment was made on

these lands marked off on the sales-books as sold for taxes to this O. Mead and Dexter Reynolds.

(Same obj. by deft. as in int. No. 5, and also because it has been asked and answered before respectfully, and because it is cross-examination of his own witness.)

Ans. I can't state when, where, or how it was paid; I only now know it was paid to my satisfaction as an officer of the county by John Warford, agent of Meads and Reynolds.

153 39th int. State if you remember if it was all paid at the same time.

(Objected to for same reasons as in int. No. 5, and also because this same question has been asked and answered before.)

Ans. I don't think it was all paid at the same time.

40th int. Give us your best reccollection as to how many payments were made.

(Same obj. by deft. as in int. No. 5, and also because it has been asked and answered before.)

Ans. There was at least two payments and possibly three.

41st int. Can you state that there was not more than three payments?

(Same obj. by deft. as in int. No. 5.)

Ans. I cannot.

42nd int. Can you state that there were not more than four?

154 (Same obj. by deft. as in int. No. 5.)

Ans. I cannot.

43rd int. Can you state that there were not more than five?

(Same obj. by deft. as in int. No. 5.)

Ans. I cannot; I cannot positively remember more than two.

44th int. Can you state that there were no more than six?

(Same obj. by deft. as in int. No. 5, and also because it has been asked and answered before, and also because it is cross-examination of his own witness.)

Ans. I don't think there was.

45 int. What is your best reccollection as to there having been more than three?

(Same obj. by deft. as in int. No. 5; also same question has been asked and answered before, and hence it is cross-ex. of his own witness.)

155 Ans. I have no best recollection about it.

46 int. State as near as you can the amount of each one of their two payments you did receive.

(Objected to for the same reason as in int. No. 5 by deft., and also because it has been asked and answered repeatedly, and because it is cross-examination of his own witness.)

Ans. I coulden't state any amount.

47 int. Approximate.

(Obj. by deft., same as to int. No. 46.)

Ans. At the commencement of the sale there was a sum of money paid in—it might have been one or two thousand dollars or more—and on the final delivery of the certificates the balance of the money was paid, counting the total amt. of certificates, and in the intermediate time there might have been payments made; and on the final delivery the balance was paid.

156 48 int. How long a time elapsed between the first payment and the final payment, as near as you can tell?

(Same obj. by deft. as in the 46.)

Ans. It was probably six weeks; it might have been a little earlier or a little later.

49 int. At what time of day was this one, two, or three thousand dollars paid you at the commencement of the sale?

(Same obj. by deft. as in int. No. 46.)

Ans. I can't say at what time of day it was paid in. I only know that I demanded the parties bidding on land to deposit money, so as to make bids safe.

50 int. Was that your uniform custom?

(Same obj. by deft. as in int. No. 46.)

Ans. I remember that that was the custom at that sale, for the reason that a stranger at a sale previous came along and bid in quite a
157 quantity of land and failed to pay up, and the certificates had to be canceled. That is the reason I adopted that rule for sales after that time.

51st int. I will ask you whether you required all persons who bid at that sale to deposit money before they commenced bidding?

(Obj. by deft., same as in int. No. 5.)

Ans. That rule only applied to persons I did not know to be entirely responsible.

52 int. I will ask you whether you required it of the Mead and Reynolds before any bidding was done by them or for them?

(Same obj. by deft. as in int. No. 5.)

Ans. I can't say that the money was paid in on the requirement, but if it had not been paid I know it would have been required.

53 int. How much, if any, of these lands marked on the sales-
158 book as sold to this Mead & Reynolds had been sold or marked off as sold to them or either of them before any of this money had been paid in?

(Objected to by deft., for same reason as stated in int. No. 5.)

Ans. Not any.

54 int. State how this first payment was made.

(Same obj. by defendant as in int. No. 5.)

Ans. It was made in money.

55 int. What kind of money?

(Same obj. by deft. as in int. No. 5.)

Ans. Such money as was rec'd for taxes.

(Here the solicitors for the plaintiff claim "that the witness is hostile to plaintiff, and manifests a reluctance to tell what he knows in regard to the matter in controversy, and asserts the right to propound
159 leading questions, and upon this ground such interrogatories herein as are leading are propounded.

The defendant therein state' that there is no evidence of such hostility or unwillingness on the part of the witness to answer all proper questions fully; that the examination has been vexatious because the witness does not state facts that are untrue.)

56 int. State whether it is not a fact that this first payment was made by a check or draft?

(Obj. to by deft., for same reason as in int. No. 5.)

Ans. It may have been paid in draft and it may not; I only know it was paid in such kind of funds as was recd. by me as county treasurer.

57 int. State whether it was handed you in person or was sent to you by letter or by express.

(Same obj. by deft. as in int. No. 5.)

160 Ans. I can only state that I recd. the money in a satisfactory manner as county treasurer. I can't tell what shape it was in.

58 int. Do you say that you received from one to three thousand dollars at one time from these parties and don't remember whether it was paid you in person or was sent by letter?

(Same obj. by deft. as in int. No. 5.)

Ans. I wouldn't undertake to say positively. It has been over nine years ago.

59 int. Give us your best recollection as to whether that money was sent you by letter or by express, or was paid you in person.

(Same obj. by deft. as in int. No. 5.)

Ans. I have no best recollection about it. I had no occasion to charge my memory with it particularly.

60 int. State as near as you can how long before any of these lands
161 were marked off on the sales-book as *as* to O. Mead or Dexter Reynolds or either of them for taxes, was it that this money was received.

(Same obj. by deft. as in int. No. 5.)

Ans. I don't remember how long; it may have been an hour or two, and it may have been half a day. I only know there was money paid before any lands were entered up.

61st int. May it not have been two days?

(Same obj. by deft. as in int. No. 5.)

Ans. I think not.

62nd int. Where were you when you received the money?

(Same obj. by deft. as in int. No. 5.)

Ans. I think likely I was in the court-house in Lewis.

63rd int. Who brought it to you.

(Same obj. by deft. as in int. No. 5.)

162 Ans. All the money I received on this sale from Mead & Reynolds I received from their agent, Warford.

64 int. Did he in person hand this money to you?

(Same obj. by deft. as in int. No. 5.)

Ans. I couldn't say positively; I know that I received the money from John Warford, their agent, and I suppose that he handed it to me.

65 int. Did you have any talk or correspondence with this John Warford with regard to the purchase of these lands at tax-sale before the sale.

(Same obj. by deft. as in int. No. 5.)

Ans. I did.

66 int. How long before the sale?

(Same obj. by deft. as in int. No. 5.)

Ans. I don't remember.

163 67th int. State as near as you can remember.

(Same obj. by deft. as in int. No. 5.)

Ans. Probably three or four weeks.

68 int. State whether it was a correspondence or conversation.

(Same obj. by deft. as in int No. 5.)

Ans. It was a correspondence.

69 int. How many letters did you get from him in regard to it, and where are they.

(Same obj. by deft. as in int. No. 5.)

Ans. I don't know how many, and don't know where they are.

70th int. Can you produce either of those letters?

(Same obj. by deft. as in int. No. 5.)

Ans. I cannot.

71 int. Have you ever searched for them; and, if so, when?

(Same obj. by deft. as in int No. 5.)

164 Ans. I have searched for them two or three years ago.

72 int. Did you find them when you searched?

(Same obj. by deft. as in int. No. 5.)

Ans. I did not.

73rd int. State how, and with what degree of dilligence, did you search for them.

(Same obj. by deft. as in int. No. 5.)

Ans. The old letters that have accumulated while I was county treasurer I stored away in a sack some three or four years ago. I can't state exactly the time. I went to examine for these letters, and found the entire batch of old letters entirely destroyed and eat up by mice, and I have since searched among other old letters, but find no trace of them.

74 int. Do you account for those letters being destroyed in that way?

(Obj. by deft. same as in int. No. 5.)

165 Ans. I do.

75 int. State, as near as you can, the contents of those letters.

(Same obj. by deft. as in int. No. 5.)

Ans. The first letter that I received from Warford he made inquiry in regard to the amount of land that was delinquent, and would be sold at the ensuing sale, and a request for me to mail him a paper containing the delinquent list. I received other letters, but I can't remember their contents further than he informed me that he wanted to invest a considerable amount of money at that tax-sale.

76 int. Didn't he tell you in one of those letters to start in the northeastern part of the county for O. Mead, and run through the county east and west until about one-half the amount to be invested was taken in the name of O. Mead? Then to commence in the southeast

166 part of the county until you have got about the same amount for Dexter Reynolds, and not to take any railroad land or timberland?

(Same obj. by deft. as in int. No. 5.)

Ans. It may and may not; I don't remember.

77 int. State whether one of those letters did not contain instructions to you as to how you should proceed in marking off lands to this Mead and Reynolds, on the register of tax-sales.

(Same obj. by deft. as in int. No. 5; also objected to because it assumes that he did instruct the treasurer, and also assumes that the treasurer would mark land on his sales-book that was not sold.)

Ans. They may or may not; I don't remember.

78 int. Were not all of these lands purchased by this Mead & Reynolds at this tax-sale marked off on the register of tax-sales, ac-

167 cording to the instructions previously given by their agent, John Warford?

(Same obj. by deft. as in int. No. 5, and also because it assumes a fact that is not true, and also assumes that the treasurer did not do his duty.)

Ans. I don't remember the details in regard to the sale. I don't remember.

79 int. Were not all of the purchases made by one of the parties confined to the southern part of the county and all those made by the other party confined to the northern part of the county?

(Same obj. by deft. as in int. No. 5.)

Ans. It is very likely that is the case; the records will show if it is. I think they were.

80 int. Was there not an arrangement or understanding between you and Warford that the southern portion should be marked off to one of

the parties and the northern portion to another and in whole forties?

168 (Same obj. by deft. as in int. No. 5.

Ans. I don't now remember.

81st int. State, if you know, how the county came to be divided between the parties in that way.

(Same obj. by deft. as in int. No. 5, and also because it assumes that the *the* county was divided in that way.)

Ans. If so divided I suppose one wanted land in the north part of county and the other in the south part.

82nd int. At the time that their land was being marked off on the register of tax-sales or on the tax-list who was present?

(Same obj. by deft. as in int. No. 5.)

Ans. I don't remember.

83rd int. Do you remember whether any body was present except yourself and your deputy or clerk?

(Same obj. by deft. as in int. No. 5.)

169 I don't remember. I would suppose there would be somebody there.

84 int. Is it not a fact that at that time there were no bidders present and no bidding?

(Same obj. by deft. as in int. No. 5.)

Ans. When we was engaged in marking upon the tax-list I wouldn't suppose there would be any bidders present.

85 int. How did you make the sale?

(Same obj. by deft. as in int. No. 5.)

Answer. In the usual manner of making tax-sales. In the first place See cross-inter. 20. I opened the sale by public out cry on the 4th day of January, and the sale after that was conducted by my clerk entirely; I only signed the certificates. It was a very busy time of year, and I was engaged in taking in taxes.

86 int. How long was he engaged in entering up the land to

170 Mead and Reynolds?

(Same obj. by deft. as in int. No. 5.)

Ans. Doing all the business & making out the certificates he was about six weeks, more or less.

87 int. Were you present in the office every day while he was doing this?

(Same obj. by deft. as in int. No. 5.)

Ans. I expect I was.

88 int. Now tell us how he conducted the sale.

(Same obj. by deft. as in int. 5.)

Ans. I suppose that he conducted his part in the sale by entering up the bids that was received first in the tax-lists then on the register of sales and then from register of sales into certificates.

89 int. How were the bids made?

(Same obj. by deft. as in int. No. 5.)

171 Ans. I suppose by the parties saying they would take the land and pay the taxes.

90 int. How did they make known their bids to the treas.; by handing in to him slips of paper with the lists of lands they wanted?

(Same obj. by deft. as in int. the 5; also because it is leading, because it assumes that there *was* lists of lands handed in.)

Ans. Some parties may have handed in slips of paper with lists of land *other* designated to the clerk, such lands as they wanted by the book or advertisements.

91st int. Then when parties handed in lists of land they wanted to your clerk, or designated them in the other way you speak of, did the clerk enter up these lands as designated on the tax-list as sold to such parties, and then on the register of tax-sales, and issue certificates accordingly?

(Same obj. by deft. as in int. the 5.)

172 Ans. I couldn't say positively, as I didn't stand over him and examine just what he did.

92 int. Where were these sales held?

(Same obj. by deft. as in int. the 5.)

Ans. In the town of Lewis, Cass County, Iowa. That was the county-seat.

93rd int. In what place in that town?

(Same obj. by deft. as in int. No. 5.)

Ans. At the court-house, in the treasurer's office.

94th int. During the time that these sales were being made, where were you in reference to the place when this clerk was making the sales; how near him were you?

(Same obj. by deft. as in int. No. 5.)

Ans. The same was made under my supervision, and I suppose I was there. I can't say how near I was to the clerk, whether it was

173 two feet or a yard across the room from him.

95 int. Were you where you could observe what was going on at the time?

(Same obj. by deft. as in 5 int.)

Ans. I don't remember.

96 int. Were you most of the time where you could observe what was going on?

(Same obj. by deft. as in 5th int.)

Ans. I suppose I natural'y understood what was going on. It was my business to be around where I could see what was going on. I suppose I was where I could observe what was going on. It was my business to be there.

97th int. How did this John Warford, agent of Mead & Reynolds, make known to your clerk or yourself his bids?

(Same obj. by deft. as in 5th int.)

174 It having been over nine years since that transaction took place I cannot rem'ber.

98th int. Do you remember how other persons made their bids then?

(Same obj. by deft. as in 5 int.)

Ans. I don't remember the particulars.

99th int. What do you remember in regard to the sales to said Mead and Reynolds?

(Same obj. as in 5 int.)

Ans. It being now over nine years ago, I don't remember much about it. The important points about it that I remember *is* that I received a large sum of money, and they got a large number of certificates. The records will show about the sale generally. I don't think of anything more now.

100 int. Did not said Mead and Reynolds purchase nearly all the land that was sold at that sale?

(Same obj. by deft. as in 5th int.)

175 Ans. My recollection is that they invested a larger amount than anybody else. It is probable that they boughtmost of the land. The records will show the amount.

101 int. State whether you did not act as agent for parties in the purchase of lands at that tax-sale.
(Objected to by deft., for same reason as in int. the 5.)
Ans. I don't know whether you could call it acting as agent. A party sent me money as county treasurer to invest in tax-titles.
102 int. Who was the party?
(Same obj. by deft. as in 5 int.)
Ans. W. B. Beebe.
103 int. How much money did you invest for him at this sale?
(Same obj. by deft. as in 5 int.)
Ans. I have no means of knowing without going to the records.
176 104 int. Was it less than four thousand dollars?
(Same obj. by deft. as in 5 int.)
Ans. It was.
105 int. Was it less than three thousand dollars?
(Same obj. by deft. as in 5 int.)
Ans. Yes.
106 int. Was it less than two thousand dollars?
(Same obj. by deft. as in 5 int.)
Ans. Yes.
107 int. Was it less than one thousand dollars?
(Same obj. by deft. as in 5 int.)
Ans. I think it was.
108 int. Was it less than nine hundred dollars?
(Same obj. by deft. as 5 int.)
Ans. My recollection is that it was somewhere between five hundred and one thousand dollars.
177 109 int. How did you manage the investment for him?
(Same obj. by deft. as in 5 int.)
Ans. I believe I managed it in a satisfactory manner to him.
110th int. Did you bid for the lands for Beebe?
(Same obj. by deft. as in 5 int.)
Ans. I don't think I did.
111 int. How did you make the selection of Beebe's lands?
(Same obj. by deft. as in 5 int.)
Ans. I designated such lands to the clerk to mark up to Beebe, being no opposition bids.
112 int. What were Beebe's instructions in regard to the class of lands you were to select for him?
(Same obj. by deft. as in 5 int.)
Ans. I don't remember.
178 113 int. Were they not to select only such lands as had only one or two years' taxes due on them; not to take any timber land or railroad land?
(Same obj. by deft. as in 5 int.)
Ans. I don't remember any such instructions.
114 int. Did he leave it entirely to your discretion to make the selections?
(Same obj. by deft. as in 5th int.)
Ans. He may, and he may not; I don't *know* remember.
115th int. When did you make these selections; was it while these other lands was being marked off to Mead and Reynolds, or before or after?
(Same obj. by deft. as in 5th int.)
Ans. I don't remember.
116th int. What did Beebe pay you for your trouble?

(Same obj. by deft. as in 5 int.)

Ans. I don't remember.

179 117th int. Did he pay you anything?

(Same obj. by deft. as in 5 int.)

Ans. Yes.

118. Were these lands that you purchased for Beebe offered to any other persons in attendance at the time they were entered up to Beebe.

(Same obj. by deft. as in 5th int.)

Ans. I don't remember.

119 int. State whether these lands purchased by said Mead and Reynolds were not entered up in the same way the lands were for Beebe?

(Same obj. by deft. as in 5 int.)

Ans. I don't remember.

120th int. Do you remember in what order the lands were entered up on the tax-list and the register of sales and entered in the certificates of purchase?

(Same obj. by deft. as in 5th int.)

180 Ans. I do not; the tax-books and register of sales will show.

121st inst. Were the lands sold to Mead and Reynolds all entered on the tax-list as sold to them before you commenced making out certificates or not?

(Same obj. by deft. as in 5 int.)

Ans. I cannot state from recollection, but would suppose they were.

122 int. State what you mean by saying that you opened this sale by public outcry?

(Same obj. by deft. as in int. No. 5.)

Ans. By going to the court-house door and saying, "Oh, yes, oh, yes, oh, yes. The tax sale is now open."

123rd int. State whether these sales continued from day to day, until all the lands was disposed of.

(Same obj. by deft. as in 5 int.)

181 Ans. My recollection is that the sale was adjourned and more land sold again in June following.

124 int. When was it adjourned?

(Same obj. by deft. as in 5th int.)

Ans. I don't now remember.

125 int. State as near as you can remember the time?

(Same obj. by deft. as in 5th int.)

Ans. I can't fix the date in my mind. It was evidently adjourned, as there was other sales in June. I can't state definitely in regard to it.

126 int. Did the sales continue as long as two weeks after January 4th, 1864?

(Same obj. by deft. as in 5th int.)

Ans. The records show that it was all continued under date of January 4th. I don't remember how long it was.

182 127th int. Was it as long as one week?

(Same obj. by deft. as in 5th int.)

Ans. I repeat him my answer to last interrogatory.

128th int. What is your recollection in regard to its being as long as one week?

(Same obj. by deft. as in 5th int.)

Ans. I havn't any definite recollection about it.

129 int. Can you swear that it continued more than one day?

(Same obj. by deft. as in int. No. 5.)

Ans. It having been over nine years ago, I would not swear to any definite recollection about it outside of the records.

130 int. Did you conduct any of these sales personally?
(Same obj. by deft. as in int No. 5.)
Ans. I was there and considered I was running the machine.
183 131 int. Did you receive the bids.
(Same obj. by deft. as in 5th int.)
Ans. I would so consider it.
132 int. Tell us what you did; what part you took in the conduct of the sale?
(Same obj. by deft. as in 5th int.)
Ans. I was county treasurer, and whatever was necessary to be done or was done had to be done by my order. The particular things that we done outside of the record I can't now remember.
Not being able to complete the taking of this deposition to-day, I adjourn the further taking of the same until to-morrow, April 4th, 1873, at 9 o'clock, a. m.

A. T. SHARP,
Commissioner.

APRIL 4TH, 1873.

Pursuant to adjournment the parties appeared in person and
184 by counsel, and the witness, Isaac Dickerson, and I continued the taking of said depositions, as follows:

ISAAC DICKERSON, in continuance of his deposition, deposed as follows:

133rd int. In what capacity was this man E. W. Davenport acting at the time he entered up these lands under the sale of January, 1864?
(Same obj. by deft. as in 5th int.)
Ans. He was acting for me and under my instructions, as clerk.
134th int. State whether or not at the time of the sale for January 4th, 1864, you had any deputy. If so, whom?
(Same obj. by deft. as in int. No. 5.)
Ans. I had none.
135th int. State whether, at the time of entering up the lands under the sale of January 4th, 1864, your clerk, above referred to, was a sworn officer of the county.
(Same obj. by deft. as in 5 int.)
185 Ans. At different times he held different county offices, but whether he was sworn at the time or not I don't remember, or whether at the time he held any county office; he had been county judge, prosecuting attorney, and county surveyor; he was merely acting as clerk for me, and I did not consider it necessary to have my clerk sworn, as he never signed any official papers for me. I never had him sworn.
136 int. State how far it is from where this sale was held, on the 4th day of January, 1864, to the place where these certificates of Mead and Reynolds were delivered.
(Same obj. by deft. as in 5th int.)
Ans. My impression is that a portion of them was delivered at the office where the sale was held, and I know that a part of them
186 were delivered at Adel, Dallas County, Iowa, which is in the neighborhood of seventy (70) miles from where the sale was held.
137th int. State who were present on Monday, the 4th day of January, 1864, at the tax-sale, giving the names of all the persons whom you distinctly remember of being there.
(Same obj. by deft. as in 5th int.)

Ans. I don't remember who was present. There was myself and Mr. Davenport there, I remember distinctly.

138 int. State if it is not a fact that your clerk was checking off lands at said sale, as sold to Reynolds, Mead, and Beebe, at a time when there was no one present but he and yourself?

(Same obj. by deft. as in 5th int.)

187 Ans. After such lands had been designated at the tax-sale they might and they might not have been entered up when no one else was present.

139th int. Did you not, in the conducting of said sale, first check off such lands for the delinquent taxes as was wanted by a few of the residents and smaller bidders, and then select from the delinquent-list such lands as you desired for Mr. Beebe, and then, from the list, check off for Mead and Reynolds, till the amount of money they wished to invest was exhausted.

(Same obj. by deft. as in 5th int., and also as leading and suggestive.)

Ans. I might or I might not have done so, as such a long time has elapsed since the transaction I cannot remember details.

140 int. State how the lands checked off to Mead and Reynolds were designated to yourself or your clerk. Give your best recollection

188 of the transaction.

(Same obj. by deft. as in 5th int.)

Ans. I cannot remember; I have no best recollection about it.

141 int. State who purchased for Mead and Reynolds at the tax-sale in 1865?

(Same obj. by deft. as in 5th int.)

Ans. If any such purchase was made by—I suppose it was made by John Warford. I don't know of their having any other agent.

142 int. State whether or not Warford, the agent of Mead and Reynolds, was present in person at the tax-sale of 1865?

(Same obj. by deft. as in 5th int.)

Ans. If there was such sale, and Meads & Reynolds were purchasers I suppose he was there, as he was the only agent they had that I know of.

189 143rd int. State how you checked off the lands sold at the 4th of January, 1864, sale; was it from advertised list in the newspaper or otherwise?

(Obj. to by deft. for same reason as in int. No. 5; also because it is leading and suggestive.)

Ans. It might have been checked off from the newspaper or from the tax-book; I can't say which.

144 int. State which it was your usual custom to check from at the tax-sales?

(Same obj. by deft. as in 5th int.)

Ans. I don't remember.

145 int. Here the solicitors for the plaintiff, claiming that the witness is unwilling and reluctan; that his testimony is different from what they had reason to expect, and different from that given in a former examination on oath, and for the purpose of refreshing the memory of the witness, hand him his deposition taken in the case of John P.

190 Campbell vs. H. A. H. Plater, before H. T. Sharp, a notary public, on the 19th day of September, 1871, at Atlantic, Cass County, Iowa, a true copy of which is hereto annexed, marked "Exhibit A," and the witness is asked whether, at the time and place aforesaid, he swore in answer to interrogatories three, (3,) 5, 6, 7, and 9, said deposition, as therein stated.

(To which the defendant objects, for the reason stated in objection to interrogatory No. 5, and also because they cannot impeach or contradict their own witness, and also because no such suit or proceeding in any court was commenced or pending as that of John P. Campbell vs. H. A. H. Plater, as mentioned in that Exhibit A; that said Campbell is one of the solicitors for the plaintiff in this suit, and that said Plater was a clerk in his office; that it was a trick and fraud practiced
191 by plaintiff' solicitors on the witness to entrap him, and not done in good faith; that they fraudulently pretended that there was such a suit pending, and got the witness to make statements without having examined the matter, and that whatever he said then he said without reflection or examination; and further that said Dickerson was not cross-examined, and that no one appearing or noticed to appear in said matter except plaintiff's solicitors.

The plaintiff here protests against the defendant suggesting to the witness the answers he desires him to make under color of pretended objections.)

Ans. That deposition was sworn to, according to my recollection, and after Mr. Sulley. The party propounding the questions had made a statement of his suppositions, what he supposed to be facts, and his calling to my recollection certain points in the transactions of these sales he may have refreshed my memory, and it was sworn to accord-
192 ing to my recollection at that time. There was no cross-examination, and no one else present at the examination.

146th int. At the time this deposition was taken, were not the facts connected with this transaction more fresh in your memory than they are now?

(Same objection by deft. as in objection to interrogatory No. 145.)

Ans. I don't know.

147th int. Will you read your answers to interrogatories No. 3, 5, 6, 7, & 9, in said deposition, and then state whether your recollection was not better at that time than it is now in regard to those facts?

(Same obj. by deft.' solicitors as objection to interrogatory No. 145.)

Ans. I will not read them, from the fact that I believe that there was fraud practiced upon me in obtaining those depositions.

193 148 int. Is the signature subscribed to those depositions your signature?

(Same obj. by deft. as objection to interrogatory No. 145.)

Ans. I refuse to examine the signature for the reasons stated in answer to previous question.

149th int. Did you not examine it a moment ago, and is it not your signature?

(Same obj. by deft. as in interrogatory No. 145.)

Ans. I did not examine it, and shall not examine it.

The witness refusing to answer the foregoing interrogatories, the plaintiff refuses to further examine the witness until the question is passed upon by the court in which this action was pending, and asks the commissioner to certify such refusal to said court, and the plaintiff
194 now turns the witness over to the defendant for cross-examination.

On cross-examination the witness testified as follows:

1st cross-interrogatory. How many tax-sales have you made or held as treasurer of Cass County, at regular and adjourned sales, while you were treasurer of Cass County.

(The plaintiff objects to the question as immaterial and irrelevant.)

Ans. I was treasurer of the county nearly nine years, and the law prescribed there shall be a general sale each year. Such sales were

held, and in addition to the general sales there was a number of adjourned sales. There was probably fifteen or twenty sales while I was treasurer.

2rd cross-int. Is your evidence that you have given on your
195 direct examination according to your present recollection of the facts relative to the sale of January 4, 1864?

Ans. It is.

3rd cross-int. Was all the land sold at the January sale, 1864, that was delinquent for taxes, or that been advertised for sale at that time?

(Plaintiff objected to the question as being immaterial, incompetent, and not the best evidence.)

Ans. It was not.

4th cross-int. About how much land remained unsold after the January sale?

(Plaintiff objects for same reason as in last cross-interrogatory.)

Ans. There was some seven or eight thousand acres.

5th cross-int. Are you acquainted with Dexter Reynolds or O.
196 Mead, or ever had any correspondence with them, or either of them, or any business with them otherwise than selling them land for taxes, through John Warford, at the January sale, 1864?

(Plaintiff objects to the question as being immaterial, irrelevent, and assuming a matter not proved.)

Ans. I am not, and have not.

6th cross-int. Was John Warford present in person at your January tax-sale in 1864 to purchase lands for D. Reynolds and O. Mead?

(Objected to by plaintiff for same cause as last above stated and also leading.)

Ans. It is my recollection that he was.

7th cross-int. Did you, as treasurer of Cass County, sell D.
197 Reynolds and O. Mead, through John Warford, the land entered or marked on your sales-register as being sold to them respectively.

(Objected to by plaintiff as not being the best evidence and as being leading, and calls for an answer involving the proposition of law as to what facts are sufficient to constitute a sale.)

Ans. I did.

8th cross-int. Were said sales made by you in your office, as such treasurer, after you had publicly opened the sale, as before stated in your direct examination, and were such sales made publicly and openly?

(Objected to by plff. for reasons last above given.)

Ans. The sales were made in my office, and they were public, and made after public outcry.

198 9th cross-int. Had any and all parties an opportunity to attend and bid at such tax-sale?

(Same obj. by plff. as in cross-int. No. 7.)

Ans. It was open to all parties.

10th cross-int. Did you do anything to prevent competition or to prevent a fair open sale of land for taxes?

(Same obj. by plff. as in cross-int. No. 7.)

Ans. I did not.

11th cross-int. Do you know or believe that anything was done by any person at that sale or otherwise to form any combination or prevent a fair & open sale?

(Obj. by plff. for same reason as stated in obj. to cross-int. No. 7, and incompetent in calling for the opinion of the witness.)

Ans. I do not.

199 12th cross-int. Do you know where this Mr. Beebe lives spoken of in your direct examination?

(Same obj. by plff. as in cross-int. No. 7.)

Ans. In Cadiz, Ohio.

13th cross-int. Where, if you know or have heard, do' O. Mead or D. Reynolds live?

(Objected to by plff. as immaterial.)

Ans. I have heard they lived in the State of New York.

(Answer objected to by plff. as being incompetent.)

14th cross-int. Do you know whether John Warford, or Meads, or Reynolds are acquainted with Mr. Beebe?

(Obj. to by plff. as being immaterial.)

Ans. Not to my knowledge.

15th cross-int. Did Warford, or Meads, or Reynolds know anything about the correspondence or arrangements between you and Mr.
200 Beebe in relation to investing money for him, Beebe, in tax-land or otherwise at that sale?

(Plff. objects, for the reason that it is not proper cross-examination, immaterial, and irrelevant.)

Ans. Not to my knowledge.

16th cross-int. Were you acquainted with the value of land in Cass County in January, 1864?

(Obj. by plff. same as to last cross-int.)

Ans. To some extent.

17th cross-int. Were you engaged then in selling lands for other parties?

(Obj. by plff. same as to last cross-int.)

Ans. Yes; when I could.

18 cross-int. Was that part of your business; was you also a land-agent?

(Same obj. by plff. as in cross-int. No. 15.)

201 Ans. Yes.

19th cross-int. What, in your opinion, was the land in controversy worth in January, 1864, at public cash sale.

(Objected to by plff. as immaterial, incompetent, irrelevant, and improper cross-examination, and relating to matters not enquired of in direct examination, the witness not having shown himself competent to give an opinion in regard to their particular land.)

Ans. There wasn't hardly any cash-value on land at that time. I base my opinion only on what lands were in my hands for sale about that time. There was about one thousand acres of fair land sold at 50 cents an acre, and nine hundred acres sold by the same party about that time for seventy-five cents an acre. That being the case, I could not place the value of these lands at over seventy-five or one dollar an
202 acre at that time.

(Plff. objects to so much of the answer as relates to particular sales of lands, on the ground that it is not responsive to the question, and immaterial, and irrelevant.)

20th cross-int. In your answer to interrogatory No. 85, direct examination, the commissioner has taken your answer that your *fox*-sales were made by your clerk. Do you mean to be so understood that your clerk made the sales, or that you made them yourself, and that your clerk attended to the making of the entries in the books and filling out the certificates under your direction.

(Objected to by plff. as leading.)

Ans. My intention was to say that the clerk done all the writing

under my directions. I superintended the sale and signed and stamped all the certificates.

Redirect examination:

203 1st redirect interrogatory. How much land was sold at the January sale, 1864?

Ans. I should think there was 20,000 or 30,000 acres.

2rd redirect int. In your answer to cross-interrogatory No. 7 you say that you sold to D. Reynolds and O. Meads, through John Warford, their agent, the land marked on the sales-register as being sold to them. State what acts were performed by you and also by said Warford in relation to said sale.

(Same objection interposed by deft. as in chief interrogatory No. 5.)

Ans. The most important acts that I now remember was the delivery of the certificates and receiving the money for the same.

3rd redirect int. In your answer to cross-int. No. 11 you say that you do not know or believe that anything was done by any person at

204 that sale or otherwise to prevent a fair and open sale. Do you regard the marking off of this land to Beebe without any bids having been made by him and to other persons land contained in lists handed in to your clerk as not tending to prevent a fair and open sale?

(Objected to by deft. because it assumes that Beebe made no bid, which is not proven, and, on the contrary, it is proved that he wrote letters directing the treasurer to strike it off to him, and that he did so openly, without preventing competition, and when no one would take it but him, and still leaving nearly 8,000 acres unsold.)

Ans. My answer is that I know of nothing being done to prevent a fair and open sale.

4th redirect int. Do you know what lands are involved in this suit?

205 Ans. I have seen a list of the lands said to be involved in this suit.

5th redirect int. State when.

Ans. To-day.

The witness desires to make an explanation or correction to his answer to interrogatory No. 85, which is as follows:

I wish to say that my clerk merely done the clerical work that was connected with the sales.

Also the witness desires to make the following explanation or correction to his answer to interrogatory No. 145:

I wish to say that that statement or so-called deposition was signed after Mr. Sully, the party propounding the questions, had made a statement of his theory of the sale. The statement was signed by me, but I have no recollection of its being sworn to.

ISAAC DICKERSON.

206 Examination taken, reduced to writing, and by the witness, Isaac Dickerson, subscribed and sworn to this 4th day of April, 1873, before me.

H. T. SHARP,
Commissioner.

WILLIAM WADDELL, of lawful age, being produced on the part of the plaintiff, carefully examined and duly sworn to testify to the truth, and nothing but the truth, deposes and says:

1st interrogatory. State your name, age, place of residence, and occupation.

Ans. My name is William Waddle; age is thirty-eight years; residence, Atlantic, Iowa; and occupation at present is cashier in a bank.

2nd int. State whether you are acquainted with the parties to this suit.

Ans. I am some acquainted with Mr. Callanan and Mr. Hurley;
207 don't know Meads and Reynolds.

3rd int. State if you occupied any official position in Cass County, Iowa, on the 4th day of January, 1864. If so, what, and how long thereafter did you occupy that position, if any?

Ans. I was at that time clerk of the district court, and, by virtue of that office, clerk of the board of supervisors of Cass County, Iowa, and held the office for five years after that time.

4th int. State whether or not you were present at a tax-sale purporting to have been held on the 4th day of January, 1864, at the court-house in said county by the then county treasurer.

Ans. I was.

5th int. State whether or not you was in attendance upon said sale on the 4th day of January, 1864, and kept a record of all such
208 tracts of land as was that day sold.

(Objected to by defendant as incompetent, immaterial, irrelevant, and not the best evidence.)

Ans. I was in attendance on the sale, but did not that day make a record of the lands sold. I made up the record afterwards.

6th int. State whether or not O. Meads or Dexter Reynolds were either in attendance upon said sale on the 4th day of January, 1864, and bid upon lands then offered for the delinquent taxes.

Ans. I don't think they were.

7th int. State whether or not there was any one present at the said sale on the 4th day of January, 1864, who bid off lands in the name of and for Dexter Reynolds and O. Meads, or either of them.

(Objected to by deft. for same reason as given in interrogatory No. 5.)

209 Ans. There was some lands, I think, struck off to them that day. I can't say who bid them off now.

8th int. State whether or not you are acquainted with John Warford, of Adel, Dallas County, Iowa.

Ans. I met John Warford at Lewis, the old county-seat of Cass County, several years ago, then living at Adel.

9th int. State whether or not the said John Warford was in attendance at the court-house in Cass County, Iowa, on the tax-sale on the 4th day of January, 1864.

(Same obj. by deft. as in 5th int.)

Ans. I would not state positively whether he was or was not there on that day, but it is my impression that he was not.

10th int. State what opportunities you had of seeing Mr. Warford or knowing of his presence if he had been present and bidding at the said sale on the 4th day of January, 1864.

210 (Same obj. by deft. as in 5th int.)

Ans. I was in the treasurer's office during a portion of the day when the sale took place there.

11th int. State whether or not you were present when the sale opened on that day.

Ans. I think I was.

12th int. State about what part of the time you was present on that date while the sale was in progress.

(Same obj. by deft. as in int. No. 5.)

Ans. If I remember right, I was there from about the time the sale opened until about noon and a part of the afternoon.

13th int. State about how long you was there in the afternoon.

Ans. I don't remember how long. I wasn't there all the afternoon. The board of supervisors met immediately after dinner and were in
211 session a short time, and I was in again awhile, I coulden't say how long.

14th int. I will ask you whether you went back to the treasurer's office after the board of supervisors adjourned?

(Same obj. by deft. as in 5th int.)

Ans. If I remember right, I did.

15th int. Did you remain there until the sale closed?

(Same obj. by deft. as in 5th int.)

Ans. I don't remember whether I did or not.

16th int. State the relation, positive, of the treasurer's office and the room in which the board met.

(Same obj. by deft. as in No. 5.)

Ans. They were in adjoining rooms.

17th int. Was there a door opening from one into the other?

(Same obj. by deft. as in int. No. 5.)

212 Ans. There was.

18th int. Do you remember whether this door was open or not?

(Same obj. by deft. as in 5 int.)

Ans. I don't remember whether it was at that time or not.

19th int. Will you give us your best judgment *and* as to the length of time you was in the treasurer's office in the afternoon?

(Same obj. by deft. as in 6th int.)

Ans. I don't remember how long it was. It might have been one hour, or two hours, or more or less; I can't tell.

20th int. Would you have been likely to meet Mr. Warford if he had been in town that day, or know of his being there?

(Same obj. by deft. as in 5th int.; also because it asks to state a probability and not a fact.)

213 Ans. I should have been likely to have met him or known at that time of his being there.

21st int. State where it was, as near as you can remember, that you entered the lands marked on the tax-list as sold to Mead and Reynolds on the 4th of January, on the record of sales kept by you.

(Same obj. by deft. as in 5th int.)

Ans. I think I commenced making the entries the next week after [in] on my register of sales. I don't remember how long I was engaged in it. It probably took me three weeks to complete it, more or less.

22nd int. Was there any sale on the 5th of January?

(Same obj. by deft. as in 5th int.)

Ans. I don't remember whether there was or not.

23rd int. Do you remember of any sale being made on any other day that week? If so, on what day or days?

214 (Same obj. by deft. as in 5th int.)

Ans. I don't remember now of being present at any sa le n any other day in that week.

24th int. From what did you take these lands and enter them upon your register of sales?

(Same obj. by deft. as in 5th int.)

Ans. I think I copied nearly all of them from the certificates of tax-sales made out by the treasurer.

Not being able to complete the taking of these depositions, I adjourn

the same until to-morrow morning, April 5th, 1873, at nine o'clock a. m., then to be continued at the same place.

A. T. SHARP,
Commissioner.

Pursuant to the adjournment as above stated, on this 5th day of April, 1873, at 9 o'clock a. m., I continued the taking of said
215 depositions, as follows:

WILLIAM WADDELL, in continuance of his deposition, further deposed as follows:

25th int. State whether you knew or heard from the treasurer or his clerk anything in regard to a written proposition from the agent of Mead & Reynolds to have lands marked off to Mead and Reynolds as sold for taxes at the January sale, 1864; and if so, what did you hear in regard to it; and if so, when and who from?

(Same obj. by deft. as in 5th int.)

Ans. I think Mr. Dickerson told me prior to the sale of January 4th, 1864, that he had received a letter from the agent of eastern parties, Mead and Reynolds, proposing to invest some money in the purchase of lands for taxes in this county, stating the amount of money they wished to invest, and the kind of land they wished to purchase.

216 26 int. State whether anything was said in regard to one of these parties having land in one part of the county and the other party having land in another portion; and if so, state what was said in regard to it as near as you can recollect.

(Same obj. by deft. as in 5th int.)

Ans. If I recollect right, he wished to have the lands purchased by them, one taking in one part of the county, and *and* the other in the other part, I think; one wanted his lands located in the north part of the county, and the other wanted his lands in the south part, but whether or not I heard anything about that prior to the sale, I could not now state. I think, however, that the lands were so struck off.

On cross-examination the witness testified as follows:

1st cross-interrogatory. You state in your direct examination
217 that you were in the treasurer's office a part of the day of January 4th, 1864. State what you were doing, if anything, in said office.

Ans. I was there for the purpose of attending the tax-sale held that day. I don't remember what I done.

2nd cross-int. State how that tax-sale was opened.

(Objected to by plffs. as immaterial.)

Ans. I think it was opened by the treasurer declaring the sale open, he standing at the front door of the court-house. I think he declared the sale open by saying hear ye, hear ye, or something similar.

3rd cross-int. Did the treasurer call off or read off the delinquent lands there to be sold for taxes, and strike off any land at said sale to any persons?

(Objected to by plffs. as incompetent, immaterial, and not proper
218 cross-examination, and calling for matters not enquired of in examination-in-chief.)

Ans. I think the treasurer commenced calling off delinquent lands from the tax-lists, and as parties said they would take them, marked them as sold in the tax-list.

4th cross-int. Was said sale continued for a few days, and w*as* lands sold in a similar way after January 4th, 1864?

(Same objection by plaintiff as in 3rd cross-interrogatory, and calling for secondary evidence.)

Ans. I don't remember for certain, but I think there were lands so called off and sold after that day.

5th cross-int. Did you assist the treasurer in any manner in making the sales on any day, either on the 4th of January or after? And if so, what did you do, if anything, if you remember?

219 Ans. I don't remember for certain what I did. I think on the 4th day of January I checked on the advertised list the lands sold. I think after that I assisted in checking the lands sold on plats. I think I marked some as sold on the tax-list opposite each tract sold.

6th cross-int. Did the treasurer call off the land seperately, each piece as it was described on the list?

(Same obj. by plff. as 3rd & 4 cross-int.)

Answer. I think he did.

7th cross-int. State if, in calling off the lands by the treasurer, and in striking it off by him to different parties, he did it in a loud voice or openly, so that all could hear and know what was going on.

(Same obj. by plff. as to cross-int. the 3 & 4.)

Ans. I think he spoke so all in the room could hear.

220 8th cross-int. You have stated in your direct examination that you saw John Warford at the court-house or treasurer's office in Cass County; state now when to the best of your reccollection he was there.

(Same obj. by plff. as to cross-int. No. 3 & 4, and also that it misstates the answer of the witness, he having made no such answer.)

Ans. It seems to me that it was the next week after the 4 of January, 1864.

9th cross-int. State if you know whether or not he was there to attend a tax-sale and to buy in land for taxes?

(Same obj. by plff. as to cross-int. the 3 & 4.)

Ans. His business was to see about the purchase of lands for taxes for Meads and Reynolds.

10th cross-int. About how many days was he there, as near as

221 you can remember?

(Same obj. by plff. as to cross-int. No. 3 & 4.)

Ans. I don't remember just how long; I think, though, about two days.

11 cross-int. Have you anything to fix it in your memory positively whether he was there on the 4 of January or the week following? Is it a new matter of memory now, without anything to fix it certain?

(Same obj. by plff. as to cross-int. No. 3 & 4.)

Ans. As I stated before, I would not state positively that he was not there on the 4th of January. I think that when he first came in my office I was at work on my register of sales. I don't think I made any entries on that of the sale of the 4 day of January, 1864, until

222 the next Monday after that day, i. e., after the 4th of January.

12th cross-int. What date does your register of sales show that the entries were made?

(Same obj. by plff. as in cross-int. No. 3 & 4, and also as not the best evidence.)

Ans. I think that all lands sold at the sale begun on the 4th day of January, 1864, were entered on my register as sold on that day.

Redirect examination:

1st redirect interrogatory. State who was present besides yourself and Mr. Warford the day he came into your office as above testified?

(Objected to by deft. because it assumes there was somebody else in his office, which has not been proved.)

Ans. I think E. W. Davenport came in my office with Mr. Warford and introduced him.

223 2nd redirect int. State what conversation you then had, if any, with Mr. Warford?

Ans. I don't remember anything about it.

WILLIAM WADDELL.

Examination taken, reduced to writing, and by the witness, William Waddell, subscribed and sworn to this 5th day of April, 1873, before me.

H. T. SHARP,
Commissioner.

By agreement of the parties and their attorneys, the further taking of these depositions is adjourned to Thursday, April 10th, 1873, at 9 o'clock a. m., then to be continued at the same place.

H. T. SHARP,
Commissioner.

APRIL 10TH, 1873.

By agreement of the parties, by their attorneys, the further tak-
224 ing of the depositions herein is adjourned to April 11th, 1873, at 10 o'clock a. m., then to be continued at the same place.

H. T. SHARP,
Commissioner.

APRIL 11TH, 1873—10 o'clock a. m.

The parties, by their attorneys, appeared pursuant to the last adjournment herein, and I continued the taking of the depositions herein as follows:

WILKINS WARWICK, being produced on the part of the plaintiff, carefully examined, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

1st interrogatory. State your name, age, place of residence, and occupation.

Ans. My name is Wilkins Warwick; age, forty-three years; place of residence, Atlantic, Cass County, Iowa; occupation, county treas-
225 urer.

2nd int. State how long you have been so acting as county treasurer, and of what county.

Ans. Since January 1st, 1866; of Cass County, Iowa.

3rd int. State whether or not you have in your custody the treasurer's tax-list of said county for the years 1858, 1859, 1860, 1861, 1862, & 1863, and the register of tax-sales for the sale which took place on January 4th, 1864.

Ans. I have.

4th int. State whether or not you have made an examination of the said books in your office in relation to the sale of lands for delinquent taxes which is said to have taken place January 4th, 1864.

Ans. I have made examination.

226 5th int. State how many pages of the treasurer's record of the tax-sales does the said sale of January 4th, 1864, cover.

(Objected to by deft. as immaterial, irrelevant, incompetent, and not the best evidence.)

Ans. It covers about 135 pages.

6th int. State about the size of said pages.

Ans. About 17 inches long by 20 inches wide.

7th int. State how long it would take you, as treasurer, to make a certified copy of the said register of tax-sales so far as relates to the tax-sale of January 4th, 1864.

Ans. As near as I can tell, it would take about thirty days.

8th int. State what it would be reasonab'y worth to make a
227 certified copy of said record.

Ans. I think it would be worth about one hundred dollars.

9th int. State who were the principal purchasers at said sale as shown by the register of lands.

(Same objection by defendant as to interrogatory No. 5.)

Ans. D. Reynolds, O. Meads, M. D. Bartlett, W. B. Beebe, and F. H. Whitney.

10th int. State the part of the county that the register of sale shows the purchases of D. Reynolds to have been made in.

(Same objection by defendant as to interrogatory No. 5, and also that the statute and tax-deed executed thereon are conclusive as to the manner and regularity of the sale.)

Ans. All made in the south part of the county, excepting about
228 one thousand acres, I think.

11th int. State what part of the county the register shows the lands purchased by Meads at that sale to be located in.

(Same objections by defendant as to last interrogatory.)

Ans. It shows that they were in the north half of the county.

12th int. State the number of descriptions purchased by Reynolds at the sale of January 4th, 1864, as shown by the register of sales.

(Same objections by defendant as to interrogatory No. 5.)

Ans. Five hundred and twelve descriptions, according to my count.

13th int. State the number of descriptions sold to Meads at such sale on said day, as shown by the register of sales.

(Same objection by defendant as to int. No. 5.)

230 Ans. About (522) five hundred and twenty-two.

14 int. State the amount of money paid by Dexter Reynolds for the purchases made on the 4th day of January, 1864, as shown by the register of tax-sales.

(Same objections by deft. as to int. No. 5.)

Ans. Four thousand & forty dollars and seventy-nine cents, ($4,040.79.)

15th int. State the amount of money paid on the purchases of Meads on said day at said sale, as shown by the register of sales.

(Same objections by deft. as to int. No. 5.)

Ans. Three thousand and one dollars and thirty-one cents, ($3,001.31.)

16th int. State about the whole number of descriptions of land
231 sold on the 4th day of January, 1864, as shown by the register of tax-sales.

(Same objection by deft. as to int. No. 5.)

Ans. Fifteen hundred and twenty-six, (1,526.)

17th int. State about the whole amount of money paid for the purchases made on the said 4th day of January, 1864, as shown by the register of tax-sales.

(Same objections by deft. as to int. No. 5.)

Ans. About nine thousand five hundred dollars, ($9,500.)

18th int. State whether or not you have made examination of the

register of sales in relation to the sale of January 4th, 1864; and if so, *is* your foregoing answers based upon said examination?

(Objected to by deft. immaterial.)

Ans. I have examined the register of sales, and my answers are based upon such examination.

232 19th int. State whether or not you have made an abstract from said register of the sale of January 4, 1864, showing the number of purchasers at said sale, who they were, the number of pieces purchased by each, the amount of money paid by each, and the town and range in which the purchases were made; if so, produce said abstract and attach the same to this your deposition as a part thereof.

(The abstract and its contents are objected to by deft. as being immaterial, irrelevant, incompetent, and not the best evidence of the matters and things therein stated, the records being the only competent evidence.)

Ans. I have made such abstract, the township and range given in the purchases of Meads, Reynolds, and Bartlett only being complete.

Here the witness produces the abstract referred to in his answer to last interrogatory, and asks that the same be attached to this his

233 deposition, which is marked "Exhibit A," and attached hereto.

20th int. State what day of the month the sale of January, 1864, took place, as shown by the register of tax-sales.

(Objected to by deft. as incompetent and not the best evidence.)

Ans. On the 4th day.

21st int. State whether or not the said register shows any adjournment of the said sales from the said 4th of January, 1864, to any other day in said month.

(Objected to by deft. as immaterial, the law not requiring continuances or adjournments to be entered upon the tax-sale register, and incompetent and not the best evidence of what said register does or does not contain.)

Ans. It does not.

22nd int. State what day of the month the register of tax-sales

234 of 1864 shows the sale to have been held on.

(Same obj. by deft. as to int. 20.)

Ans. On the 4th day of January.

23rd int. Now, Mr. Warwick, I will ask you to examine the treasurer's tax-list for the years 1858, 1859, 1860, 1861, & 1862, and state whether or not the clerk of the board of supervisors attached his seal to this warrant for the collection of taxes of either of said years, and show which years the seal is attached to the warrant and which years it is not.

(Objected to by deft. as being immaterial whether there was any warrants or seal affixed or not, so far as an authority in the treasurer to sell land for delinquent taxes is required, the statute being sufficient and the authority to sell being derived therefrom. Also that parol evidence is incompetent and inadmissible to prove what a record does or does not contain.)

235 Ans. The seal of the clerk of the board of supervisors and county judge is attached to the warrants of 1858, 1859, and 1860; of 1861 & 1862 the seal is not attached.

By consent of the parties, by their attorneys, the further taking of these depositions is adjourned until Monday, April 14, 1873, at nine o'clock a. m., there to be continued at the same place.

H. T. SHARP,
Commissioner.

Pursuant to the adjournment as above stated, on this 14th day of April, 1873, at 9 o'clock a. m., I continued the taking of the said depositions as follows:

WILLIAM WARWICK, in continuance of his deposition, further deposed as follows:

On cross-examination the witness testified as follows:

236 1st cross-int. Will you give the names of all other purchasers at the 4th of January sale, 1864, as shown by your register of sales?

Ans. W. B. Beebe, R. Brackeette, M. S. Beard, W. D. Wheeler, John Keeyes Keyes, Peck & Co., Thomas Mitchell, B. W. Garvin, W. Young, J. P. Cassady, Miles White, P. Disbrow, O. Mills, D. Nichols, D. Glasgow, John C. Cannon, and G. E. Colton.

2d cross-int. Does the register of that sale show the sale or purchase of any other lands at that time to any other parties than those you have now named in your chief examination, and in answer to your last interrogatory?

Ans. I think not.

3rd cross-int. Are all of the lands sold at that sale to these parties marked sold and the same dated January 4th, 1864, on said register?

237 Ans. They are.

4th cross-int. Are the 135 pages of this register of tax-sales ruled; and how and what is the heading of the record; and how are the columns so ruled, marked, and designated, commencing at the left-hand side of the record and reading to the right; and how and with what are these columns filled?

(Objected to by plaintiffs as immaterial and not the best evidence, and improper cross-examination.)

Ans. They are ruled into columns, the heading "Register of sale of real-estate for delinquent taxes 186 ." The first column is marked "Names of owners;" 2nd, "Description of property offered for sale;" 3rd, "Section or lot;" 4th, "Township or block;" 5th, "Range;" 6th, "Acres;" 7th, "Years delinquent;" 8th, "State tax;" 9th, "Interest;" 10th, "County tax;" 11th, "Interest;" 12th "School-tax;" 13th,

238 "Interest;" 14th, "Road tax;" 15th, "Interest;" 16th, "Teachers' fund tax;" 17th, "Interest;" 18th, "School-house tax;" 19th, "Interest;" 20th, " ;" 21st, "Costs;" 22nd, "Total;" 23rd, "Number of acres sold;" 24th, "Part sold;" 25th, "To whom sold;" 26th, "Date of sale;" 27th, "When redeemed and remarks." The columns are filled with names, descriptions, years, amounts, part sold, names of purchasers, date of sale, corresponding to the headings.

5th cross-int. Does the register of that sale show the sale to any party of a less quantity of land than that offered for sale, as shown in the 2nd and 6th columns, inclusive, of said register.

(Objected to by plaintiff as improper cross-examination and immaterial.)

Ans. It does not.

6th cross-int. In the column showing the "part sold," how is the same designated throughout the record of that sale as shown by said register?

239 By the word, "all," in the column opposite the description.

7th cross-int. How is the purchaser of the land offered and sold indicated on said register of sales?

Ans. The name is entered in the column marked "To whom sold."

8th cross-int. State if you have examined the record of the adjourned sales of March, April, and June, of that year, and, if so, state how many or about how many acres were left unsold at the January sale, 1864, and carried over to said adjourned sale, and sold at that time.

(Objected to by plff. as immaterial and not the best evidence of what the record contained, and assuming a fact not proved, and improper cross-examination.)

Ans. I have examined the adjourned sale of March, April, and June. About twenty-five hundred acres was left unsold at the January
240 sale and sold at the adjourned sales.

9th cross-int. Have you examined the tax-books and records in your possession to ascertain by whom the taxes on the lands in controversy have been paid since said sale of January 4th, 1864? and, if so, state by whom the taxes have been paid since that time.

(Plaintiff objects to the question, as immaterial, incompetent, it not being the best evidence, and not proper cross-examination.)

Ans. I have, and find the taxes, except the year 1870, have been paid in the names of D. Reynolds and James Callanan. The lands for 1870 were sold in 1871 to different purchasers.

By agreement of the parties, by their attorneys, the further taking of this deposition is adjourned until to-morrow, April 15, 1873, at 10 o'clock a. m., then to be continued at the same place.

April 14th, 1873.

241 H. T. SHARP,
Commissioner.

APRIL 15, 1873.—In pursuance of the last adjournment herein the parties appeared. The plaintiff, by J. T. Hanna, his attorney, and the defendant, by L. L. Delano, his attorney; and the witness, Wilkins Warwick, *and* continued his deposition, as follows:

10th cross-int. In what part of the county are the lands spoken of in your last answer situated, and about how many acres are there of said land?

(Plaintiff objects, as being immaterial, incompetent, and not the best evidence.)

Ans. They are nearly all in the south part of the county; I suppose about seven hundred acres.

11th cross-int. How many acres are situated in the north half
242 or portion of the county, and in what township and range are they?

(Objected to by plaintiff as immaterial and incompetent.)

Ans. I think near two hundred acres in township No. 76, range 37, Washington Township.

12th cross-int. What is the total amount of taxes paid by these defendants on said lands at the sale of January 4, 1864, and subsequent thereto, as shown by the tax-books and records of your office?

(Objected to by plaintiff as immaterial, incompetent, and not the best evidence on the matters inquired of, and improper cross-examination, these matters not having been enquired about in chief examination.)

Ans. Ten hundred and eighty-eight dollars and twenty-one cents, ($1,088.21.)

13th cross-int. Is the total amount given in your last answer
243 the taxes paid by defendants upon all of the plaintiff's lands in this county since the sale thereof, for taxes or otherwise?

(Same obj. by plaintiff as to last above.)

Ans. It is the total on lands of D. Reynolds.

14th cross-int. Since you have been county treasurer have you ever held or made any tax-sales, and, if so, how many?

(Objection by plff. same as last above.)

Ans. I have held seven (7) regular sales.

15th cross-int. At which of these sales did you sell the greatest number of acres and descriptions of land, and how many descriptions of land were sold?

(Objected to by plaintiff as immaterial, incompetent, not the best evidence of the matters enquired of, and improper cross-examination, these matters having been enquired of in examination-in-chief.)

244 Ans. In November, 1867, nine hundred and four, including town lots.

16th cross-int. Was there any competition at said sale?

(Same objection by plaintiff as to cross-interrogatory No. 15.)

Ans. There was some opposition.

17th cross-int. At what time was the sale opened and commenced, and was it concluded that day, and at what time?

(Same objection by plff's as to cross-int. No. 15th.)

Ans. As near as I recollect, it commenced about 10 o'clock a. m., and was concluded the same day about 4 o'clock p. m., I think.

18th cross-int. Do you think, from your knowledge and experience in conducting tax-sales, that it would be difficult to sell and check off fifteen or sixteen hundred descriptions of land in one day at a sale

245 where there was no competition or opposing bids?

(Objected to by plaintiff, for same reasons as in cross-interrogatory No. 15, and also the witness does not show himself competent to testify as to the length of time it would take to sell a given quantity of land, nor does he show that the same amount could be sold under all circumstances.)

Ans. I think it could be done, but a person would have to put in a good day's work at it.

19th cross-int. About how many acres were sold at late tax-sales, aside from the 2,500 acres sold at the adjournment sale in March, April, and June, 1864, on which taxes were delinquent and unpaid at the time of the sale in January, 1864?

(Same objection by plaintiff as to cross-interrogatories No. 15 & 18.)

246 Ans. There were about four thousand and eighty hundred acres.

20th cross-int. Do the tax-lists for the years 1861 and 1862 contain a warrant from the clerk of the board of supervisors for the collection of taxes therein, excepting the seal?

(Same objection by plff. as to 15th & 18th cross-interrogatorys, and also irrelevant; also assumes an instrument in writing to be a warrant which has none of the statu'ary requirements affixed to it making it a warrant.)

Ans. They do.

21st cross-int. Are your answers as to the contents of records in your possession in the foregoing cross-interrogatories made after a personal examination of said records, with a view of ascertaining these facts?

(Same objection by plff. as to 15th cross-interrogatory.)

Ans. They were.

247 Redirect examination:

1st redirect interrogatory. Do you know what particular lands are involved in this suit of your own personal knowledge?

Ans. I know it only by a list James Callanan had in my office, having

me to look up the taxes that had been paid on certain lands that he said were in this suit.

2rd redirect int. Do you know what lands are involved in this suit, except as you have been told by others?

Ans. I do not.

3rd redirect int. State how you know the taxes on these particular lands involved in this suit have been paid in the name of the defendants, except for the year 1870, since the sale of January 4, 1864.

Ans. By examining the tax-receipt books and the tax-register of the sale of 1867.

248 4th redirect int. State how you know these particular lands were sold in 1867, when you can't state what lands are involved in this suit.

Ans. I know the lands from heresay from Callanan and Hurley, both.

5th redirect int. When did Mr. Hurley tell you that the lands involved in this suit against D. Reynolds and others were the same upon which you have testified that the defendants paid the taxes since 1864, except the year 1870?

Ans. He did not describe the lands to me, but said they were taking the depositions of Mr. Dickerson in relation to lands Reynolds sold to Callanan. This was about two or three days ago.

6th redirect int. Was that statement of Mr. Hurley's, that he was taking depositions in regard to the lands sold by Reynolds to Cal-
249 lanan, the information on which you based your opinion of what particular descriptions of lands are involved in this particular suit, and is that the only knowledge of what lands are actually involved herein that you have received directly from Mr. Hurley?

Ans. I based my opinion more on the list of the lands Mr. Callanan had when he had me looking up the amount of taxes paid on the lands in said list. I think that was the only information I received from Mr. Hurley.

7th redirect int. You state in your answer to cross-interrogatory No. 12, that the taxes on said land paid by the defendants amount to about one thousand dollars. By said lands do you mean those included in the list handed you by Callanan or have you reference to some other lands?

Ans. I mean the list handed me by Callanan.

250 8th redirect int. State whether or not the books in your office show that the lands upon which you state that the defendants have paid about a thousand dollars taxes have been redeemed from the tax-sale of 1864, or 1867, or for any other sale; if so, what sale?

(Objected to by defendant, 1st, as being improper redirect examination; 2rd, that it is not the best evidence of redemption having been made; 3rd, the question and answer involve a legal proposition and that parol evidence of a witness is incompetent.)

Ans. The tax-sale register for the sale of Nov. 4, 1867, shows said lands to have been redeemed, but no other sale that I know of.

9th redirect int. State whether or not the one thousand and eighty-eight dollars paid on the lands referred to by you was so paid
251 before the 4th day of November, 1867, or after that date; and, if both before and after, how much before and how much after?

Ans. It was paid both before and after, $430.50 before and $657.67 afterwards.

10th redirect int. State how, in conducting your tax-sales, you cry out the description of the lands you are offering and how you receive bids thereon and how you determine when a tract is sold.

(Objected to by defendant as immaterial.)

Ans. I cry out each piece separate, giving the description, section, township, and range, as it is assessed on the tax-list. I determined by finding out who would pay the taxes for the least number of acres, and when they quit bidding the person offering to pay the taxes for the least number of acres is declared the purchaser.

252 11th redirect int. State how long it would take to cry out and sell each description at a tax-sale conducted as described in your last answer.

Ans. I can sell five or six tracts in a minute, when there is but little opposition.

12th redirect int. At the November sale, 1867, you say that there was some opposition; now state about how much opposition.

Ans. There were some seven or eight bidders.

13th redirect int. Now state whether or not those bidders took their turns in bidding, or did they bid against each other and run down to fractional descriptions.

Ans. At times they bid against each other, but the most of the time I think they did not.

252 14th redirect int. State who bid for these defendants at that sale. (Objected to by defendant as immaterial.)

Ans. I do not remember at this time who it was, but I think it was Henry Temple.

15th redirect int. Was it not understood among the bidders and generally at that sale that there should be no opposition to these defendants bidding in the lands that they already had a tax-deed upon?

(Objected to by defendant as being immaterial and irrelevant, as the validity of that sale is not questioned or put in issue by the pleading herein, and the plaintiff has recognized the validity of said sale by undertaking to redeem therefrom, also, as being incompetent, and parol evidence is inadmissable to explain or contradict the record, and the deed and statute *our* conclusion as to the manner of the sale and can-

254 not be contradicted.)

Ans. There might have been such an arrangement, but I do not remember of knowing of any such understanding.

Recross-examination:

1st recross-interrogatory. In your answer to redirect interrogatory No. 8 you say that your register of the tax-sale of November, 1867, shows a redemption of these lands therefrom. State by whom the lands were redeemed, as shown by said register.

(Objected to by plaintiffs as immaterial and incompetent.)

Ans. By Michael Hurley, as shown by the tax-sale register.

WILKINS WARWICK.

Examination taken, reduced to writing, and by the witness, Wilkins Warwick, subscribed and sworn to this 15th day of April, 1873, before me.

H. T. SHARP,
Commissioner.

255 By agreement of the parties, by their attorneys, the further taking of these depositions is adjourned to Thursday, April 17, 1873, at 9 o'clock a. m., then to be continued at the same place.

H. T. SHARP,
Commissioner.

APRIL 17TH, 1873.

Pursuant to the last adjournment herein the parties appeared, the plaintiff by J. T. Hanna, his attorney, and the defendants by L. L. Delano, and I continued the taking of said depositions as follows:

WILLIAM GARDNER, being produced on the part of the plaintiff, examined, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

1st interrogatory. State your name, age, place of residence, and occupation.

Ans. My name is William Gardner. My age is forty-three
256 years; place of residence, Atlantic, Cass County, Iowa; occupation, auditor of Cass County, Iowa.

2nd int. State how long you have been acting as auditor of Cass County, Iowa?

Ans. Since January 1st, 1872.

3rd int. State whether or not you have under your care and custody the books and papers belonging to the auditor's office of Cass County, Iowa?

Ans. I have.

4th int. State whether or not you have made an examination of the auditor's register of tax-sales in your office with a view of ascertaining the average number of acres of lands contained in the descriptions of lands sold to Meads and Reynolds at the sale of January 4, 1864.

(Objected to by defendant as immaterial.)

257 Ans. I have.

5th int. State about what such average is.

(Objected to by defendant as immaterial, irrelevant, and not the best evidence.)

Ans. In my examination I find that the average number of acres sold to Meads is about 19,887 acres, and to Reynolds about 19,527 acres.

(Answer objected to by deft. as not being responsive to the question.)

6th int. State about the number of acres the register of tax-sales in your office shows was sold to Meads, and about the number of acres sold to Reynolds at the tax-sale of January 4, 1864.

(Objected to by the defendant as being immaterial, and irrelevant, and not the best evidence.)

Ans. About 19,887 acres was sold to Meads, and to Reynolds about 19,527.

258 7th int. State whether or not you have examined and searched among the papers on file in your office for the tax-list that was published giving notice of the sale of January 4, 1864.

(Objected to by defendant as immaterial.)

Ans. I have.

8th int. State whether or not you find the published list of delinquent taxes of the sale of January 4, 1864, on file among the papers in your office.

(Objected to by deft. as being immaterial, and irrelevant, and incompetent, the statutes being sufficient notice of the sale and the publication of notice and *and* the delinquent list not being essential to the validity of the sale.)

Ans. I do.

259 9th int. Produce the same and have the commissioner copy the same, so far as the heading of the list containing the notice is concerned, and so far as it relates to the lands of the plaintiff involved in this suit.

(To which the defendant objects, for the reasons given in objections to the last interrogatory, and also that the interrogatory does not call for or require the commissioner to make a copy of the whole exhibit produced by and referred to by the witness in his examination.

Here the witness produces the delinquent tax-list of the sale of January 4, 1864, as published in the Cass County Gazette, and asks that a copy of the same, so far as the heading of the list containing the notice complete is concerned, and so far as it relates to the lands of the plaintiff involved in this suit, be attached to this his deposition.

Copy of the same is attached hereto, marked Exhibit A.)

260 On cross-examination the witness testified as follows:

1st cross-int. Will you examine the published delinquent tax-list produced by you on your chief examination, and state in what newspaper the same was published, the date, and place of issue?

Ans. The name of the paper was the Cass County Gazette. The date of the paper is Saturday, Dec. 5, 1863. The place of issue was Lewis, Cass County, Iowa.

2nd cross-int. Was Lewis the county-seat of this county at that time?

Ans. It was.

WM. GARDNER.

Examination taken, reduced to writing, and by the witness, Wm. Gardner, subscribed and sworn to this 17th day of April, 1873, before me.

H. P. SHARP,
Commissioner.

261 *Exhibit A, referred to in deposition of William Gardner.*

CASS COUNTY GAZETTE, Lewis, Iowa, Saturday, December 5th, 1863.

Delinquent tax-list of Cass County, Iowa.

TREASURER'S OFFICE, CASS COUNTY, IOWA,
Lewis, October 26th, 1863.

Notice is hereby given that the following-described lands and town lots will be offered at public sale at the treasurer's office in the court-house in Lewis, on Monday, the 4th day of January, A. D. 1863, at 10 o'clock a. m., for the delinquent taxes, interest, and costs, as herein stated, and will continue to be offered from day to day until all are sold, unless sooner paid.

(Signed) ISAAC DICKERSON,
Treasurer.

Owners unknown.	S.	T.	R.	A.	1861	Int.	1862.	Int.	Cost.	Total.
S. E. N. E.	30	76	35	49	1 58	1 00	1 96	27	20	4 11
E. ½ N. W.	4	77	36	80	3 32	2 12	2 96	74	30	9 44
N. W. N. W.	4	do.	do.	40	3 32	2 12	2 06	74	30	11 40
262 S. ½ N. E.	.....	.....	.....	80	3 24	2 08	2 04	54	54	.....
E. ½	11	74	36	do.	do.	do.	do.	do.	do.	50
S. ½ S. W.	7	74	35	80	3 24	2 08	do.	do.	do.	do.
N. W. ¼	18	74	35	1 60	6 48	4 16	3 92	84	50	.....

EXHIBIT A.

Exhibit A, referred to in Warwick's deposition.

Treasurer's monthly report of revenue collected on tax-list of 18 , 18 , 18 , 18 , 18 , 18 , *Cass County, Iowa, for the month of* 187 .

Sale Jan'y 4, 1864. Names of purchasers.		State.				County.				School.				School-house.				District.		Contingent.		Bridge.		Road.		Relief.		Total.
		Tax.		Interest.		Tax.		Interest.		Tax.		Interest.		Tax.		Interest.		Tax.	Interest.	Tax.	Int.	No. pages in register.	Interest.	No. of pieces sold.	Interest.	No. of lots sold.	Interest.	
		Tp.	R.	Tp.	R.	Tp.	R.	Tp.	R.	Tp.	R.	Tp.	R.	Tp.	R.	Tp.	R.											
D. Reynolds	1	74	34	74	35	74	36	74	37	75	34	75	35	75	36	76	37	.....	.....	.....	.....	56	.....	512	.....	.....	.....	4,040 79
O. Meads	2	77	34	77	35	77	36	74	34	76	34	76	36	76	36	76	37	.....	.....	.....	.....	44½	.....	522	.....	.....	.....	3,001 31
M. D. Bartlett	3	75	34	75	36	75	37	76	34	76	37	77	34	77	36	.....	.....	.....	.....	.....	.....	11	.....	98	.....	52	.....	604 26
W. B. Beebe	4	75	35	.....	.....	74	37	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	9½	.....	97	.....	.....	.....	562 45
F. H. Whitney	5	75	36	.....	.....	75	37	.....	.....	76	36	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3	.....	66	.....	.....	.....	267 50
B. Bracket	6	75	37	.....	.....	74	37	.....	.....	76	35	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3	.....	39	.....	.....	.....	167 79
M. S. Baird	7	75	34	.....	.....	75	35	.....	.....	76	34	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3½	.....	81	.....	.....	.....	191 95
W. D. Wheeler	8	75	34	.....	.....	75	36	.....	.....	74	37	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	36	.....	.....	.....	110 52
J. Keyes	9	76	36	.....	.....	76	37	.....	.....	75	37	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	31	.....	.....	.....	167 00
Keyes, Peck & Co.	10	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	½	.....	12	.....	.....	.....	76 00
Thos. Mitchell	11	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	4	.....	.....	.....	49 91
B. W. Garvin	12	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	9	.....	13	.....	31 23
W. Young	13	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	93 35
P. Cassady	14	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	15	.....	.....	.....	54 46
Miles White	15	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	36 23
P. Disbrow	16	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	2	.....	14 02
O. Mills	17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....	1 98
D. Nichols	18	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....	6 32
D. Glassgow	19	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	¼	.....	2	.....	.....	.....	6 96
I. C. Cannon	20	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	¼	.....	2	.....	.....	.....	6 96
G. E. Cotton	21	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	8 36
																						135		1,526		67		$9,499 35

I hereby certify that the above is a correct abstract of the tax-sale of January 4th, 1864, as shown by the tax-sale register in the county treasurer's office of Cass Co., Iowa.

WILKINS WARWICK,
County Treasurer.

ATLANTIC, IOWA, *April 11th*, 1873.
Fees, $3.00.

264 In the district court of the State of Iowa, in and for Cass County.

Notice to take depositions.

JOHN P. CAMPBELL }
vs.
H. A. H. PLAYTER. }

To the above-named defendants:

You are hereby notified that, on the 19th day of Sept., A. D. 1871, between the hours of nine o'clock in the forenoon and six o'clock in the afternoon of said day, the plaintiff will take the depositions of Isaac Dickerson, W. Warwick, before H. P. Sharp, a notary public, in and for Cass County, Iowa, at his office in the town of Atlantic, in the said county and State; said depositions to be read in evidence on the trial of the above-entitled cause on behalf of plaintiff. You are requested to attend at the time and place aforesaid, & cross-examine said witnesses if you think proper.

(Signed) BROWN, CAMPBELL & SULLY,
Plff.'s Attys.

265 I hereby accept service of the above notice.
Davenport, Iowa, August 26, 1871.
(Signed) H. A. H. PLATER.

I hereby certify that the above and foregoing is a true copy of the notice to take depositions in the cause there entitled.
Dated April 17, 1873.

H. P. SHARP,
Commissioner.

Copy of deposition produced by the plff. & shown to the witness, Isaac Dickerson, on the taking of his deposition, and marked "Exhibit A."

JNO. P. CAMPBELL }
vs.
H. A. H. PLAYTER. }

Pursuant to notice duly served, appeared before me this 19th day of Sept., 1871, the plaintiff, by his attys. Brow , Campbell and Sully. No appearance by deft.'s witness. Isaac Dickerson & W. Warwick, of lawful age, being produced & duly sworn to tell the truth, the whole truth, and nothing but the truth, make oath & deposes as follows, to wit:

Int. 1st. What is your name, age, residence, and occupation?

266 Ans. My name, Isaac Dickerson; my age, forty-three years; residence, Atlantic, Cass Co., Iowa; occupation, real-estate dealer.

Int. 2nd. What years were you treasurer of Cass County?

Ans. From April, 1857, to January, 1866.

Int. 3. There was a tax-sale held in January, 1864, at which a large body of land was marked off to D. Reynolds and O. Meads. Please state how that sale was conducted; what portion of the county was marked off to Reynolds, and what portion to Meads, and the amount of money invested by each.

Ans. The tax-sale was held on the 4th day of January, 1864. The sale was commenced on that day by public outcry at the court-house

door. My instructions were, as near as I can remember, to com-
267 mence at the northeast corner of the county, and enter up the lands in the north part of the county to O. Meads, by taking the lands right in rotation that was delinquent, and the south part of the county to Dexter Reynolds. Mr. E. W. Davenport made all the entries, and made out all the certificates. It occupied his time from the 4th day of January to the latter part of February, to enter the lands upon the books, and make out the certificates. I being engaged in other business in the office merely signed the certificates and canceled the stamps. The amount of the investment by Meads & Reynolds was between ten (10) & eleven (11) thousand dollars, very nearly equally divided between them.

Int. 4. Before anything was marked off to Meads & Reynolds there were some pieces sold to residents, was there not?

Ans. There was several residents wanted to invest small
268 amounts in land. They made the selections and the lands were entered up to them.

Int. 5. What was the language of Meads & Reynolds, as near as you can recollect, in ordering the certificates, as to how much money he wanted to invest and how he wanted it invested?

Ans. My recollection is that their agent wrote me that he wanted to invest about ten thousand dollars, and his instructions was to commence in the northeast part of the county for O. Meads, run through the county east and west until about half was taken in the name of O. Meads, and then wanted the balance to about that amount to Dexter Reynolds; to be careful not to take any railroad-land or any timber-lands, and, as near as my recollection serves me, he didn't want any resident lands.

269 Int. 6. Did he appear personally at the sale?

Ans. My recollection is not clear on that point. He instructed me by letter how to proceed at the sale. The sale was commenced on Monday, and he was either here at the co. seat on day of the sale or one or two weeks later, and at this time I wouldn't be positive which.

Int. 7. There was no bidding off each piece at public auction by him, was there—(i. e.,) of public outcry of each piece and bidding made by him?

Ans. There was not. His instructions to me was when there was no opposite bids he did not consider it necessary to make public outcry for each seperate piece.

Int. 8. What was the name of the agent?

Ans. John Warford. He was the only agent I know of that
270 Reynolds & Meads had.

Int. 9. In making out these certificates to Meads & Reynolds, Mr. Davenport then just took the tax-books and made them (the certs.) out from them according to Warford's instructions?

Ans. Yes.

Int. 10. Were you present at that—Nov., 1867—sale when Callanan bid in all his lands again?

Ans. I can't say that I was present positively, but my understanding was that they were to be bid in by the co. treasurer for Mr. Callanan.

Int. 11. Who was Callanan' agent at that time, Nov., 1867?

Ans. Mr. Warwick, the county treasurer, was the only agent I know of his having in this county.

271 Int. 12. There was a sale to Dexter Reynolds in January, 1865. Who bid in those lands at the January, 1865, sale?

Ans. If there was such a sale they were bid in by Warford for Reynolds.

Int. 13. Was Warford present at that sale?

Ans. No, he was not.

Int. 14. How did he do; send a list by letter?

Ans. He sent a list by letter.

Int. 15. The certificates were made out from that list, were they?

Ans. Yes.

Int. 16. On Nov., 1865, there was a sale to Whitney, F. H. How were the certificates made out on that sale; what from?

272 Ans. They were made out from the tax-books.

Int. 17. Did Whitney furnish a list of the land he wanted?

Ans. My recollection is that he furnished a list of the lands he wanted.

Int. 18. Did he attend personally and bid in the lands he wanted?

Ans. He may have been around the office, but I have no recollection of any public bidding by him.

(Signed) ISAAC DICKERSON.

I hereby certify that the above and foregoing is a true copy of the deposition of Isaac Dickerson in the cause therein entitled.

H. T. SHARP,
Commissioner.

273 Circuit court of the United States, district of Iowa.

I, H. T. Sharp, a duly-appointed commissioner of the circuit court of the United States for the district of Iowa, do hereby certify that by virtue of a dedimus potestatem to me directed by the said court investing me with authority and full power to examine any and all witnesses brought before me in a cause pending in the said circuit court of the United States for the district of Iowa, wherein M. Hurley is plaintiff, and James Callanan, jr., et al., are defendants, on the part of the plaintiff, on the 28th day of March, A. D. 1873, I made an order under my hand directing that the said depositions be taken on the 3rd day of April, 1873, at my office in Atlantic, in the county of Cass and State of Iowa, and that notice thereof be served on counsel for the defendant as early as the 29th day of March, 1873, which said defendant' order and

274 notice are attached to this deposition; and I further certify that, on the day appointed in said dedimus, I attended at my office in Atlantic, Iowa, and there being present the plaintiff in person and his attorneys, J. W. Monk and J. T. Hanna, and the defendant James Callanan, jr., and L. L. DeLano, his attorney, and the witness Isaac Dickerson, who, being by me duly sworn and examined and his deposition by me reduced to writing in presence of the witness, and by me carefully read over to the witness and by him subscribed and sworn to before me; also the witnesses William Waddell, Wilkins Warwick, and William Gardner were each by me duly sworn and examined, and the testimony of each was by me reduced to writing and carefully read over to them respectively, and by each respectively subscribed and sworn to before me; and I further certify that the taking of these depositions

275 was, by agreement of the parties, by their attorneys, adjourned from day to day until the taking thereof was completed, and said depositions are herewith returned to the court from whence the commissioner was issued; and I further certify that I am not of counsel or attorney for either party, and that I have no interest whatever in the result of the cause named in the captain to the said depositions.

In testimony whereof I have hereunto set my hand this 17th day of April, 1873.

H. T. SHARP,
Commissioner.

(Endorsed:) Filed July 8th, 1873. George B. Corkhill, clerk. Commissioner's fees: H. T. Sharp, $49.95; witnesses' fees: Isaac Dickerson, 4.50; W. Waddell, 4.50; William Waddell, $3.00; William Gardner, $3.00; official fees serving subpœnas, James Pugh, $2.74. Paid by the plaintiff, M. Hurley.

276 In the circuit court of the U. S. for the district of Iowa. Oct. term, 1873.

Agreements for taking testimony.

MICHAEL HURLEY, PLFF.,
vs.
JAMES CALLANAN ET AL., DEFTS.

It is hereby stipulated by and between the parties in the above-entitled cause, by their attorneys, that, owing to the sickness of H. T. Sharp, esq., the commissioner who has been taking testimony in this cause, that S. W. W. Straight, esq., a notary public in and for Cass Co., Iowa, shall take the testimony of such witnesses as shall be produced by either party, and when so taken to be used in evidence on the trial of this cause, both parties waiving all irregularities in form, want
277 of notice, and all other informalities as to the manner of taking.

Signed this 24 day of Sept., 1873.

J. T. HANNA,
Atty. for Plff.
PHELPS & DELANO,
For Defendants.

Depositions of witnesses produced, sworn, and examined in pursuance of the annexed stipulation, at the office of S. W. W. Straight, in Atlantic, in the county of Cass and State of Iowa, before me, S. W. W. Straight, a notary public in and for said county, in a certain action now pending in the circuit court of the U. S. for the district of Iowa, wherein Michael Hurley is plaintiff and James Callanan et al. are defendants, on behalf of said plaintiff.

A. S. CHURCHILL, of lawful , being produced, sworn, and examined on the part of plff., deposed as follows:

278 Int. 1. State your name, age, place of residence, & occupation.

Ans. A. S. Churchill; age, 28; residence, Atlantic, Cass Co., Iowa; occupation, attorney.

Int. 2. Are you acquainted with the parties to this suit, or either of them; & if so, how long have you known them?

Ans. Have seen the plff.; have known him by sight for 3 or 4 years, & have known Mr. Callanan by sight about the same length of time; don't know the other parties.

Int. 3. State whether or not you ever heard the deft. James Callanan make any admissions as to how, under what terms, or upon what condi-

tions he had charge of, or the supervision of, the tax-titles or tax-lands in Cass County, Iowa, purchased by Dexter Reynolds & O. Meads, at the tax-sale of 1864 & subsequent years. If so, state what they were when made, & under what circumstances.

279 (Obj. to by deft. as leading & incompetent.)

Ans. Something over a year ago, I think, I took down a portion of the evidence in a case pending in the circuit court, *concomity*, in which James Callanan was a witness; and while Callanan was on the stand as a witness in said cause, he said something about the manner in which he held the lands of O. Meads & Dexter Reynolds under tax sale, but could not say whether they were on the lands in Cass Co. or not, nor under what sales. My recollection is that he said that he was to look after their lands, pay the taxes on the same, & was to have all he could make by selling such lands over and above interest, penalty, & costs, under the tax-law of this State, & a certain sum of money per forty-acre tract, but as to what amount I don't recollect.

Int. 4. State, if you know, what was the character of the suit in which the deft. Callanan stated the facts testified to in your last answer.

280 Ans. The suit was an action of right in regard to a piece of land laying in Cass County, Iowa.

Int. 5. State for what purpose said action of right was brought, if you know.

(Obj. by deft. as not being the best evidence.)

Ans. I suppose it was for the purpose of trying the validity of a tax-deed owned by O. Meads & Dexter Reynolds, (or one of them, I don't reccollect which,) on a piece of land.

On cross-examination the witness testified as follows:

Int. 1. Did you ever hear the deft. Callanan making these admissions except as a witness at the time you refer to?

Ans. I never did.

Int. 2. By whom was the balance of the testimony taken on that trial written down, & by which of the parties was the deft. Callanan' 281 evidence taken, if you know?

Ans. L. L. De Lano took down the other part, I believe, & not certain which party took down Callanan's testimony; but it is my impression that I did. My recollection is not very distinct on the subject.

Int. 3. Was the oral testimony produced on the trial of that cause at that time reduced to writing?

Ans. The substance of it was.

Int. 4. State for what purpose, if you know.

Ans. Because the parties desired it, I suppose, to be used in case of appeal.

Int. 5. Have you at this time a distinct recollection of what the deft. Callanan, as a witness, testified to at that time?

Ans. I have not, as to all he testified to; neither have I a very 282 distinct recollection of much of it.

Int. 6. Have you since you took said testimony refreshed your recollections of what was then testified to in order to prepare yourself to testify at this time by reading or looking over the minutes or records of testimony then taken?

Ans. I have not.

(S'g'd) A. S. CHURCHILL.

1 day, 1.50.

Sworn to before me and subscribed in my presence by the said A. S. Churchill this 24th day of Sept., 1873.

[L. S.] (S'g'd) S. W. W. STRAIGHT,
Notary Public.

JAMES W. BROWN, of lawful age, being duly sworn & examined on the part of plff., deposed as follows:

283 Int. 1. State your name, age, residence, & occupation.

Ans. James W. Brown; age, 49; residence, Atlantic, Iowa; occupation, attorney at law.

Int. 2. State if you are acquainted with the parties to this suit, or either of them; and if so, how long with each of them?

Ans. I am not acquainted with O. Meads or Dexter Reynolds; slightly acquainted with Callanan & Hurley.

Int. 3. State whether or not you ever heard the deft., Callanan, make any admissions as to the manner or terms by which he had charge of the tax-titles & tax-lands purchased by Dexter Reynolds & O. Meads in Cass County. If so, state what those admissions were & under what circumstances they were made.

(Obj. by deft. as leading & incompetent.)

284 Ans. I have heard him talk about the matter, but can't tell now what the substance of his conversations were.

Int. 4. State whether or not he told you, some year & a half or two years ago, at about the time the case of Oliver Everett vs. Dexter Reynolds et al. was being tried in this county, that he held those tax-lands under an agreement with Reynolds & Meads; that he (Callanan) was to look after those lands, pay taxes, & take charge of them generally, & when sold pay the said Meads & Reynolds the tax-interest & penalty & a bonus of five dollars on a forty, & what was left after paying these amounts he (Callanan) was to have for his trouble.

(Obj. by deft. as leading.)

Ans. Your question brings to my mind a conversation, that was in substance that all the interest Callanan had was the surplus he
285 might realize from the said lands after paying Reynolds & Meads the taxes, penalty, interest, & cost & a bonus, which I don't remember the amount. But I cannot be positive now whether Mr. Callanan himself told me this or I got this information from others; but my best impressions are that Mr. Callanan told me so.

Int. 5. State whether or not you ever heard Mr. Callanan make any admissions as to what terms & conditions he had charge of the tax lands of Meads & Reynolds in Cass County. If so, state what such admissions were and when made.

(Obj. to by deft. as leading & as having been propounded & answered twice already.)

Ans. I answer the same answer I gave before, with the same explanations, & in regard to place it was at Atlantic.

On cross examination the witness testified as follows:

286 Int. 1. State where in the town of Atlantic you think such conversation with Callanan occur'ed, & who was present at the time.

Ans. The conversation was at the court-house in Atlantic. My impression is Callanan related it as to who was present. I don't know now who was present. We were having a general talk about tax matters; I think it was term time.

Int. 2. Are you positive that you had any such conversation with deft. Callanan, at that or any other time?

Ans. I am not positive, as I stated in my answer to intg. in chief, that Mr. Callanan made those statements as to his interest in those lands, but I am positive that Mr. Callanan and I had many talks on the question of tax-titles or difficulties arising out of tax-sales.

Intg. 3. Will you swear that deft. Callanan did make such state-
287 ments in your hearing?

Ans. As stated in my examination in chief, I was not then positive, nor am I now, that those statements were made to me by Mr. Callanan, but, as then stated and as I now state, my best recol'ection and belief is he did make them to me.

Int. 4. Is it not possible that you are mistaken as to your source of information, & have gathered this from outside parties after deft. Callanan's testimony was taken in the trial of a certain cause in this county about that time?

Ans. It may be possible, but I think not.

JAS. W. BROWN.

Sworn to before me and subscribed to in my presence by the said Jas. W. Brown this 24th day of Sept., 1873.

S. W. W. STRAIGHT,
Notary Public.

288 WILKINS WARWICK, of lawful age, being produced, sworn, & examined on the part of plff., deposed as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. Wilkins Warwick; age, 43; residence, Atlantic, Iowa; occupation, treasurer of Cass County.

Int. 2. Have you in your possession, as such treasurer, the records and register of tax-sales of the year of 1862? If so, please examine the same, & state on what date the sale of lands for delinquent taxes was commenced, & the different times & dates the said records show lands to have been sold for delinquent taxes during the said year, and state specially the date of the last sale as shown by said register?

(Obj. by deft. as irrelevant and immaterial.)

Ans. I have said records in my possession. The sale commenced on Nov. 3rd, 1862, according to the record, and a' adjourned sale
289 on Jan. 19, 1863; also an adjourned sale on March 16, 1863; also March 23rd, 1863; on June 8, 1863; on June 9, 1863; on June 22nd, 1863; on June 29, 1863; August 11, 1863; on Sept. 17, 1863; on Oct. 19, 1863; & Oct. 20, 1863, being the last sale as shown by said register.

Intg. 3. State whether or not your register shows any lands to have been sold at any other dates than those above mentioned from the sale commenced Nov. 3rd, 1862.

(Obj. by deft. as irrelevant.)

Ans. It does not, as shown by the register.

On cross-examination the witness testified as follows:

Int. 1. Does the register of the sale of 1862, refer'ed to, show any adjournment made by the treasurer conducting the sale from the 3rd day of November, 1862, to any time or times in that year, the year following, or to any time in the year 1864?

290 (Plff. obj. as immaterial.)

Ans. It does not.

Intg. 2. Have you any record of any such adjournment refer'ed to under your control as said treasurer?

Ans. I have not.

(S'g'd) WILKINS WARWICK.

Sworn to before me, and subscribed in my presence by the said Wilkins Warwick, this 24th day of Sept., 1873.

(S'g'd) S. W. W. STRAIGHT,
[L. S.] *Notary Public.*

By agreement of parties, the further taking of these depositions is adjourned until Saturday, the 27th day of Sept., 1873, at 1 p. m.

(S'g'd) S. W. W. STRAIGHT,
[L. S.] *Notary Public.*

Pursuant to adjournment, as above stated, on this 27th day of Sept., 1873, at 1 o'clock p. m., at Atlantic, in the county of Cass, State
291 of Iowa, I continued the taking of said depositions as follows:

WM. GARDNER, of lawful age, being *being* produced, sworn, and examined on the part of plff., deposes as follows:

Int. 1. State your name, age, residence, & occupation.

Ans. Wm. Gardner; age, 44; residence, Atlantic, Iowa; occupation, auditor of Cass County, Iowa.

Int. 2. State whether or not, as such auditor, you have under your control the advertised tax-list of delinquent lands of Cass County, Iowa, for the sale that was begun on the 4th day of January, 1864, and if so, produce the same and allow the notary to make a copy of the notice & the list of delinquent lands involved in this suit, as shown by Exhibit No. 1, hereto attached, and have the same attached hereto as a
292 part of your deposition, which is accordingly done.

(Deft. objects as immaterial, irrelevant, incompetent, not the best evidence, the tax-deed being conclusive evidence of notice & advertisement for the tax-sale.)

Ans. I have the advertised list & notice in my possession, & hereby produce the same for notary to take copy, which is accordingly done & hereto attached, and marked "Exhibit A."

Int. 3. Have you in your possession in said office any other paper or list of the delinquent lands advertised for said sale?

(Obj. by deft. for the same reasons as to int. No. 2.)

Ans. I have no other advertised list for the year above stated.

On cross-examination the witness testified as follows:

Int. 1. State the name or title of the newspaper containing the
293 advertised list refer'ed to; also the place & date of publication of the No. on file containing said list.

(Plff. obj. as immaterial.)

Ans. The name of paper is the Cass County Gazette, published at Lewis, Cass Co., Iowa; date, Saturday, December 5th, 1863.

(S'g'd) WM. GARDNER.

Sworn to before me, and subscribed in my presence by the said Wm. Gardner, this day of Sept., 1873.

(S'g'd) S. W. W. STRAIGHT,
[L. S.] *Notary Public.*

294 EXHIBIT No. 1.

S. ½ S. E.	8	74	34
W. ½ S. W.	18	74	34
N. ½ N. E.	3	74	35
N. ½ N. W.	3	74	35
N. W. ¼	7	74	35
S. W. ¼	7	74	35
N. ½ N. W.	19	74	35
S. ½ N. E.	11	74	36
N. E. N. W.	3	75	36
N. ½ N. W.	25	75	36
S. W. N. W.	29	76	35
S. ½ N. W.	19	76	37
N. W. N. W.	19	76	37
W. ½ S. W.	19	76	37
N. ½ N. W.	4	77	36
S. ½ S. E.	20	77	36
N. ½ N. W.	2	74	35
W. ½ N. W.	18	74	35
N. E. N. W.	18	74	35

295 EXHIBIT A.—*Delinquent-tax list.*

CASS COUNTY, IOWA,
TREASURER'S OFFICE, CASS CO., IOWA,
Lewis, Oct. 26, 1863.

[Exhibit A.]

Notice is hereby given that the following-described lands and town-lots will be offered at public sale at the treasurer's office in the court-house in Lewis, on Monday, the 4th day of Jan., 1863, at 10 o'clock a. m., for the delinquent taxes, interest, & cost as herein stated, & will continue to be offered from day to day until all are sold, unless sooner paid.

ISAAC DICKERSON,
Treasurer.

Owners unknown.	S.	T.	R.	A.		1861.	Int.	1862.	Int.	Cost.	Total.
N. W. qr.	18	74	34	160		6 48	4 16	3 28	84	50	.....
W. hf. S. W.	18	do.	do.	80		2 60	1 66	1 64	42	30	.....
S. hf. S. E.	8	do.	do.	80		2 60	1 66	1 64	42	30	.....
S. hf. N. W.	29	76	35	80		3 92	2 50	6 24	68	30	9 96
E. hf. N. W.	4	77	36	80		3 32	2 12	2 96	74	30	9 44
N. W. N. W.	4	do.	do.	40	From 1860	3 32	2 12	2 16	74	30	11 40
S. E. hf.	20	77	36	160	do. 1859	1 66	1 06	.....	.....	1 90	19 00
W. hf.	3	75	36	320	do. do.	10 24	6 50	9 92	2 56	2 90	58 28
W. hf. S. W.	19	76	37	64	do. 1860	2 18	1 40	1 94	49	50	11 57
W. hf. N. W.	do.	do.	do.	do.	do. do.	do.	do.	do.	do.	do.	do.
296 E. hf. N. W.	do.	do.	do.	80	do. do.	3 18	2 04	3 10	80	50	12 08
E. hf.	11	74	36	80	do. do.	3 24	2 08	2 04	54	50	.....
S. hf. S. W.	7	74	35	80		3 24	2 08	1 64	42	30	.....
N. W. qr.	25	75	36	160	do. 1859	5 12	3 25	4 96	1 28	1 50	.....
N. ½ N. E.	3	74	35	55	do. 1860	1 80	1 16	1 16	31	50	.....
N. hf. N. W.	3	do.	do.	do.	do. do.	do.	do.	do.	do.	do.	.....
N. W. qr.	7	do.	do.	140	do. do.	3 28	3 11	2 08	83	90	.....
N. E. S. W.	7	do.	do.	28½	do. do.	90	58	59	15	31	.....
S. W. S. W.	7	do.	do.	do.	do. do.	90	58	59	15	31	.....
N. hf. N. W.	2	74	35	55	do. do.	1 80	1 16	1 16	30	30	.....

I hereby certify that the foregoing is the list furnished by Wm. Gardner in answer to int'g. No. 2 of his deposition, the same showing all the marks & figures in said list relative to the above lands.

(S'g'd) S. W. W. STRAIGHT,
[L. S.] *Notary Public.*

297 STATE OF IOWA,
Cass County, ss :

I, S. W. W. Straight, notary public in & for said county & State, do hereby certify that, in pursuance of the annexed stipulation, I caused to come before me at my office in the town of Atlantic, county & State aforesaid, on the 24th day of Sept., 1873, between the hours of 9 a. m. & 4 p. m. in the afternoon, A. S. Churchill, J. W. Brown, Wilkins Warwick, and on the 27th day of Sept., 1873, (as shown by adjournment,) Wm. Gardner, who were then & there by me duly sworn & examined, & their examinations reduced to writing, & after being by me read over to said witnesses, the same were subscribed & sworn to by them respectively in my presence, & their said depositions are now herewith returned. And I further certify that J. T. Hanna was present & conducted said examination on behalf of the plaintiff and L. L. De Lano was present and cross-examined said witnesses on behalf of the deft.

298 Given under my hand and official seal, hereto annexed, at Atlantic, in the county of Cass & State of Iowa, this 10th day of Oct., 1873.

[L. S.] (S'g'd) S. W. W. STRAIGHT,
Notary Public.

Witnesses' fees :

A. S. Churchill, one day & 1 mile	1 60
J. W. Brown " " " "	1 60
W. Warwick " " " "	1 60
Wm. Gardner " " " "	1 60
Notary's	6 10
Postage	15

(Endorsed :) Filed Oct. 11, 1873. George B. Corkhill, clerk.

299 In circuit court United States, district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLAN, JR., ET AL. } In equity.

To said defendants and their attorneys :

You are hereby notified that complaints will on the 14th day of January, A. D. 1874, at one o'clock p. m. of said day, at the law office of D. W. Woodin, in Adel, Dallas County, Iowa, in pursuance of the order of the examiner of said court, proceed to take the testimony and depositions of witnesses on part of complainant, when and where you can appear & cross-examine said witnesses, if you so desire.

300 (S'g'd) PHILLIPS & PHILLIPS,
Att'ys for Compl't.

Service of the above notice accepted this January 8th, 1874.
(S'g'd) J. R. BARCROFT,
Att'y for Defendant.

3 In circuit court, district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN JR., ET AL. } In equity.

I hereby fix my at Adel, in Dallas County, Iowa, as the place, and

Wednesday, the 14th day of January, A. D. 1874, at one o'clock p. m. as the time, for taking depositions in the above cause on the part of complainant, and order and direct that notice of this order be served upon defendant or their attorneys five days before the time thus fixed for taking of such proofs.

Signed this Jan'y 6th, A. D. 1874.

(S'g'd) D. W. WOODIN,
Examiner.

302 *Dedimus protestatum.*

CIRCUIT COURT OF THE UNITED STATES,
District of Iowa, ss:

To D. W. Woodin, of Adel, Dallas County, Iowa, greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested, with full power and authority to examine any and all witnesses who may be brought before you on their corporal oaths as witnesses in a cause depending in the circuit court of the United States for the district of Iowa, wherein M. Hurley is plaintiff and James Callanan, jr., et al., defendant', on the part of the plaintiff. And, therefore, you are hereby commanded that at certain days and places, to be appointed by you for that purpose, you do cause the said witnesses to come before you, and then and there examine their on oath. That the interrogatories and cross-interrogatories propounded to said witnesses you shall cause to be written out and the answers thereto to be inserted immediately following the respective interrogatories. That you cause the whole to be read over to the witnesses and the same to be subscribed by them, and duly sworn to before you. That you take said deposition in accordance with your certificate, which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned. That you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court of Des Moines, Iowa. That you endorse on the outside of said envelope, thus directed, the title of the cause in which the deposition is to be used; and that you execute this commission with all convenient speed.

Witness the honorable Nathan Clifford, senr. associate justice of the Supreme Court of the United States, this 3rd day of January, 1874, and in the 98th year of the Independence of the United States of America.

Attest:

[L. S.] GEORGE B. CORKHILL,
Clerk of United States Circuit Court District of Iowa.

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded (whether written or oral) to be written out and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole, being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the deposition and returned with them, unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

303 Depositions of witness, produced, sworn, and examined at Adel, Dallas County, Iowa, before me, D. W. Woodin, in pursuance of the annexed commission to me directed, in an action now pending in the circuit court of the United States, district of Iowa, wherein M. Hurley is plaintiff and James Callanan, jr., et al., defendants, on behalf of the plaintiff; and COLE NOOL, being produced, sworn, and examined on the part of the plaintiff, deposed as follows:

Int. 1. Give your name, age, place of residence.

Ans. Cole Nool; 55 years of age; residence, Adel, Dallas Co., Iowa.

Int. 2. What office did you hold in Dallas County in the year 1864, and during the month of January of said year?

Ans. I was clerk of the district court.

Int. 3. Was you or not, at the time enquired about in the last
304 question, clerk of the board of the supervisors of Dallas County, Iowa?

Ans. I was, and held the office by virtue of being clerk of the district court.

Int. 4. Know you John Warford, of the town of Minburn, in Dallas County, Iowa, and how long have you known him?

Ans. I do, and have known him for some sixteen years.

Int. 5. Where did he reside during the month of January, 1864, and what was his business and occupation during that time?

Ans. He resided in Adel, Dallas County, Iowa. A large portion of that time he was in my employ as deputy in the district court, and portion of the time as clerk to the United States assessor. He was hired by me by the year to assist in those two offices.

305 Int. 6. Are you or not acquainted with the handwriting of the said Warford?

(Objected by defendant because immaterial & irrelevant.)

Ans. I think I am.

Int. 7. Have you now before you the record of the proceedings of the board of supervisors of Dallas County, Iowa, for the month of January, 1864?

(Objected to as above.)

Ans. I have.

Int. 8. On what day of the month did said board of supervisors commence its session in the month of January, 1864?

(Objected to as above.)

Ans. The records show it to have been on the 4th day of the month.

Int. 9. Do the records show it to have been adjourned from day to day; and, if so, for how many days did said board of supervisors
306 hold its session, and what days of said month of January, 1864?

(Objected to as above.)

Ans. The records show that they did adjourn from day to day, and were in session three days, the fourth, fifth, and sixth days of the month.

Int. 10. Please examine the records of the board of supervisors of said Dallas County showing their proceedings on the fourth, fifth, and sixth days of January, 1864, and state in whose handwriting the proceeding of the first day's session is kept and recorded.

(Objected to as above.)

Ans. The record of the opening of the session of the board of super-

visors, on the 4th day of January, 1864, appears to be in the handwriting of John Warford; the balance of that day's proceedings, except three of the last orders, is in my handwriting, and the adjournment
307 of the board for that day is in my handwrite; and the three orders previous to the adjournment are in the handwrite of Mr. Warford.

Int. 11. How many pages of the record is covered by the first day's proceedings of the said board, and please give as good an idea as you can of the size of said record-book?

(Objected to as above.)

Ans. About three pages and one-third, and the record-book is 18 inches long & eleven inches wide.

Int. 12. Please examine the record of the said board for the fifth day of January, 1864, it being the second day of its January session, 1864, and state in whose handwriting is said proceedings recorded.

(Objected to as above.)

Ans. The first part of the record, nearly one-half of the page, is
308 in my handwrite, and then follows about two pages of Warford's handwrite, and then follows four entries in my handwrite, then three entries and the adjournment in Warford's handwrite.

Int. 13. Please examine the records of the proceeding of said board for the sixth day of January, 1864, and state in whose handwriting is the record of said proceedings entered for said day.

(Objected to as above.)

Ans. The entire record of that day's proceedings is in the handwriting of Mr. Warford.

Int. 14. What is the subject of the last order made by the board of supervisors on the last day's session, to wit, the sixth day of January, 1864; I mean to what does it relate?

(Objected to as above.)

Ans. It is an order making an allowance of the per diem for
309 the board of supervisors for said session.

Int. 15. To what does the first entry made on the 4th day of January, 1864, in the record of said board, relate?

(Objected to as above.)

Ans. To the meeting or assembling of the members and the election of the chairman of the board.

Int. 16. Are there any other entries made in said record in the month of January, 1864, which are in the handwriting of said Warford? And, if so, please give the date and permit the notary to copy the entry.

(Objected to as above.)

Ans. None as I know of.

Int. 17. Have you now before you the stub-book of the treasurer of Dallas County for January, 1864, corresponding to the tax-receipts issued, being the stubs retained by him showing the receipts issued by him, date, and to whom issued?

310 (Objected to as above.)

Ans. I have what I believe to be the stub-book above referred to.

Int. 18. Examine the stub for tax-receipts, Nos. 524, 525, 526, 527, 528, 529, 530, & 531, bearing date January 7th, 1864, and signed at the bottom of each stub Warford, and state in whose handwriting is such signature.

(Objected to as above.)

Ans. I have examined said stubs referred to, and find there is no name written at the bottom of said stubs, but Mr. Warford's name is written

near the centre of the stub. I believe Warford's name to have been written there by himself, but it is in different ink from what the rest of the stub is, and also in a different handwriting.

On cross-examination the witness testified as follows:

311 Int. 1. State whether John Warford had the right or privilege of attending to the paying of taxes and buying in land at tax-sales for other parties while he was in your employ in January, 1864; and, if so, was he engaged part of the time in paying taxes and purchasing lands for other parties?

(Objected to, because not proper cross-examination; because immaterial.)

Ans. He had such privilege, and did pay taxes and buy lands at tax-sale for other parties.

Int. 2. Do you know that he went to Cass County in January, 1864, to buy land at tax-sale and about how long was he gone? If you know state what you know, the fact, and as near as you know about the time of the month.

(Objected to for same reason as last above.)

Ans. I know that he left here for the purpose of going to Cass
312 County to buy land at tax-sale for Dexter Reynolds. I think he was not absent more than two to four days. I do not know the exact time, but some time in that winter; it was very cold weather.

Int. 3. In this record of the proceedings of the board of supervisors, which you referred to in your direct examination, please state how many lines is written on a full page, and about how many words on a line.

(Objected to for same reason as last above.)

Ans. About 18 lines to a page, and about 9 or 10 words to a line, solid writing.

Int. 4. How many pages would there be if it was solid work during the three days' session?

(Objected to for same cause as last above.)

313 Ans. There would be between four and five pages, if it was solid work.

Int. 5. State if the handwriting of any person appears in said record except what appears to be in your handwriting and said Warford's.

(Objected to for same cause as above.)

Ans. There is none other except mine and Warford's.

Int. 6. Did the chairman of the board of supervisors, or either of them, sign their names to any of the proceedings or adjournment proceedings?

(Objected to for same reason as above.)

Ans. They did not.

Int. 7. Are you acquainted with the manner in which the clerk of the board of supervisors now keeps a record of their proceedings; I
314 mean whether he notes their proceedings down on legal cap in *ruff* or short, and afterwards copies them into the record in full?

(Objected to by plaintiff because immaterial and incompetent.)

Ans. I think the present clerk of the board of supervisors takes the proceedings down on a separate paper, and after being correct records them in the record-book.

Int. 8. If the same way had been adopted, or was *addobptent*, in reference to the proceedings of the board of supervisors in January, 1864, mi'te it not property occur that in transcribing them to the record-book a part would be in your handwriting and part in the handwriting of John Warford, just as they now appear to have been written or copied?

(Objected to by plaintiff beca'se, 1st, hipothetical; 2nd, immaterial; 3rd, irrelevent; 4th, incompetent.)

Ans. Yes, that mi'te be the case.

315 Int. 9. Do you find in the same record-book that that way did take place? I mean that you took down the proceedings on a seperate peice of paper, and afterwords the proceedings were copied by another party in the record-book.

(Objected to by plff. for the same reason as last above questions.)

Ans. It is my best recollection that the Janiary term and the June term, 1866, of said board were first taken down on seperate paper, and afterwords copied into the record by my son; that all of the records between January, 1864, and January, 1866, are in the handwriting of myself and John Warford, except the records of the proceedings of said board at the Septembur and Oct. term *term*, 1865, which is in the handwriting of my son and myself.

316 Int. 10. Can you state poscitively whether the proceedings of the supervisors of January, 1864, were taken down on a seperate piece of paper, and afterwords writtien into the book, or written in the record in the first instance?

(Objected to because not cross-examination, & immataerial and irrelivent.)

Ans. I do not recollect anything about the proceedings of the board of supervisors independant of the record or how it was done.

Int. 11. State whether the name of John Warford that appears on the stubs of the tax-receipts refer'ed to in the 18 interrogatory of your dirict examination is any part of, or was anything to do with, the tax-receipt or the stubs thereof.

Ans. They are no part of the stubs tax-receipt, only they are to indicate who paid the taxes as agent.

317 Int. 11. Is there anything to indicate when that name was put down, whether the names were put down at the date of stubs or a week or so after or any other time?

(Objected to as in cross-inter'ogatory No. 10.)

Ans. If the name had been made in the same handwrite or ink the presumption would be that it was made at the same time.

Int. 13. Will you set forth one copy of the stubs with Warford's name in it as it apperrs in the ones referred to in 18th interrogatory in your direct examination, and one stub as it appears in said book without his name on it or attached to it?

(Objected to as in cross-interrogatory No. 10.)

Ans. I will, and attach them as Exhibit' A & B hereto.

Witness testified on redirect examination, as follows:

318 Int. 1st. How many pages in all does the record of the board of supervisors of January fourth, fifth, and sixth, in 1864, occupy?

(Objected to by deft. because immaterial & irrelivant as in int. No. 6, direct examination.)

Ans. Ten pages.

Int. 2. How many orders is on the 1st page besides the proceedings showing the organization of said board, which you say is in the handwritting of Warford?

(Objected to as above.)

Ans. Four.

Int. 3. How many on the second?

(Objected to as above.)

Ans. Eight.

Int. 4. How meny on the third ?
(Objected as above.)
Ans. Eight.
319 Int. 5. How meny on the fo'rth ?
(Objected to as above.)
Ans. Two and adjurnment, which order of adjurnment is in the words following: "Ordered that the board adjurn until to-morrow morning at 9 o'clock. Cole Norel, clerk;" which order of adjurnment is in my handwritting.
Int. 6. How meny orders are on the 5th, 6th, 7th, 8th, 9th, and 10th pages respectively besides the minutes of meetings and adjurnments ?
(Objected to as above.)
Ans. On 5th page four orders; on the 6th page there are seven orders; and on the seventh page there eight orders; on the eighth page four orders and order of adjurnment; 9th page, four orders besides preliminarry entrey of meeting; 10th page there is one order of per diem and mil'age of the members of the board.
320 Is or is not these ten pages of record written with the usual blank spases to designate to the eye one order from another, except that where and adjurnment occurs from day to day the proceedings of the next day commence on a new page ?
(Objected to as above.)
Ans. They are.
Int. 8. Will you please examin' the book know' as the warrent-book now before you, and state if it is a record keept of the warrents issue upon the treasurer of Dallas County, in persuance of the orders of the board of sepervisors of said county ?
(Objected to as above.)
Ans. Yes, it is.
Int. 9. You may state how meny colioms is rul'd upon each page, and give the title of each colum', reading from the left to the *writ*.
(Objected to as above.)
321 Ans. There is nine; the first is for the month & day of the month; the 2nd, the year; the 3rd the number of the order corresponding with the number on the order-book; the 4th the name of the person to whom the order was allowed; 5 for what allowed; 6th the page of the record of the proceedings of the board of supervisors; 7th & 8th the amounts of order; 9th date that the order was cancil'd or paid.
Int. 10. Was the entrys made in the 1st & 2nd colum's showing the date of the issuance of the warrents made in this record at the times of the issuances of the warrents, and at the time and times they perport to be made ?
(Objected to as above.)
Ans. That was the usual way of doing business, and I know nothing to the contrary; our manner of doing business was when we issiued an order to write the date of isseing inu the left-hand column.
Int. 11. Examine the entry of dated January 12th, 1864, show-
322 ing the date of the issuance of warrant No. 47, on page 22, and state in whose handwriting is the entrey.
(Objected to as above.)
Ans. It is in the handwriting of John Warford.
Int. 12. Examine the entrey of date of January 13th, 1864, showing date of issuance of warrant No. 98, on page 23, and say in whose handwriting it is.
(Objected to as above.)
Ans. John Warford.

Int. 13. Examin' the entrey of date of January 12th, 1864, showing the date of issuance of warrent 213, and the entry of date January 12th, 1864, showing the issuance of warrant No. 250, and say in whose handwriting these entries are.

Ans. John Warford.

323 Int. 14. Examine the entrey of date of January 12th, 1864, showing the issuance of warrent No. 274; also the entry of January 6th, 1864, showing the dates of the issuance of No. 324; also the entry of January 8th, 1864, showing the issuance of warrent No. 3281; also the entry of January 11th, 1864, showing the issuance of warrent No. 531, on page 29 of said record, & say in whose handwriting they each are.

(Objected to as above.)

Ans. They are all in the handwrite of John Warford.

Int. 15. Examine the entry of date of January 4th, 1864, showing the date of issuance of warrant No. 3; also the entri's bearing date of January 13th, 1864, showing the issuance of warrents Nos. 6 & 7; also the entry bearing date January 12, 1864, showing date of issuance of warrent No. 21; also entry bearing date January 6th, 1864, showing

324 date January 11th, 1864, showing date of issuance of war'unt No. 23; also entry of said date showing date of issuance of war'unt No. 30; also entry of January 16th, 1864, showing date of issuance of war'unt 37; and also date of January 6th, 1864, showing date of issuance of war'ent No. 43, on page No. 30 of said record, and say in whose handwriting each of these several entries are; and also examine the five several entries on page 31 of said book, each bearing date of January 6th, 1864, and showing the dates of the issuance of the several warrents therein mentioned; also on same pages the entry of January 11th, 1864, showing the date of the issuance of warrents No. 54; and also the entry on said page of January 8th, 1864, showing the date of issuance of war'ent No. 55, and say in whose handwriting *are* each of said several entries are.

(Objected to as above.)

325 Ans. All in the handwriting of John Warford.

Int. 16. Examine extry January 16th, 1864, showing issuance of warrent No. 160, and say in whose handwriting is the same.

(Objected to as above.)

Ans. John Warford's.

Int. 17. In whose handwriting are all the other entries in said book showing the date of issuance of the several warrents therein set forth by numbers immediately preceeding intermade and immediately following the entries you have testified to as having been made by John Warford?

(Objected to as above.)

Ans. I think they are all in my handwrite and John Warford's, so far as I have observed.

Int. 18. By whom was this record book kept during the time

326 these entries were made therein as testified by you?

(Objected to as above.)

Ans. It was keept by me as clerk of the district court & clerk of the board of supervisors, and by John Warford, as my deputy.

Int. W*as* you the United States assessor of the fifth collection district of Iowa; and did John Warford act as your deputy or clerk in keeping the record and making your returns as such assessor?

(Objected to as above.)

Ans. John Warford was my clerk at that time and assisted me in making out returns and reports and keeping records.

Int. Did you in keeping those records give the true dates of accruances, and the true dates of entries, wherever your entries perported to show the date of their making?

(Objected to as above.)

327 Ans. We of course aimed to make correct dates, but on receiving a monthly return from an assistant assesser, we would place the date of receiving the same on the envelope in which the return was enclosed, & when the returns from dif'erent subdistricts, and we made our monthly return to the collectors, we then wrote the date of each return on each when received. I do not know that we keept any record except a record for stamps and cigars, and probably those entries were made at the time they perport to be, and any record kept in a book showing our own individual actions as officers therein made would be made the day they perport to be made.

Int. To whom did you surrender these books when you went out of office, and who has them now, if you know?

(Objected to as above.)

328 Ans. To *Maejer* Anderson, my successor, and I suppose they are now in the pussession of L. P. Skerrucia.

Int. Now please examine the records of the board of supervisors of January, 1864, and the order in which the entries are made their by yourself and John Warford, and state according to your brest knowledge and brelief whether these entries in the record of their proceedings were or were not made on the day and days they perport to have been made?

(Objected to as above.)

Ans. Well, I would suppose they were. I believe they were, but I will not swear they were; the only recollection I have is from the record.

Int. Examine the order-book heretofore shown you, and state

329 whether or not the several entries therein made by John Warford showing the date of the issuance of the warrents as heretofore testified by you, were or were not made of record on the several days thereof perport to have been made? Please answer according to your best knowledge and belief.

(Objected to as above.)

Ans. My opinion is that most of them, and perhaps all of them, were; there was sometimes when we issued an order we failed to or neglected to make any entry of the date, and when the treasurer returned us the orders, we then wrote down the date on which the order was issued. With these exceptianial instances the record show the true date of the issuance of the orders.

The witness testified as follows on recross-examination:

Int. Does not your and Warford's handwriting resemble each other very much as appears from the record?

(Objected to as above.)

330 Ans. I think there is a little similarity in our writing.

Int. Examine your record-book of the proceedings of the board of supervisors of January, 1864, and the pages contains eight orders, and state how many words each order contains.

(Objected to as above.)

Ans. They will av'rige about 17 words.

Int. Do your records, (if you had any,) or your returns to the collector made monthly, show whether Warford was here in Adel on any particular day, or in any particular week, in January, 1864? I mean to ask if he were away a few days in January, 1864, would not your returns as assessor show the same that they would if he were here all the time?

Ans. The returns would show the same. There is nothing in
331 my proceedings as assessor, as I recollect of, which would go to show whether Warford was in Adel in any particular day or days.

(Sgd.) COLE NORL.

Finis P.

Sworn to before me, and subscribed to in my presence, by the said Cole Norl, this 14th day of January, 1874.

D. W. WOODEN,
Commissioner.

332 O. D. SMALLEY, being produced and sworn, depose' and says:

Int. 1. What is your name, age, & place of residence?

Ans. My name is O. D. Smalley; age, 56 years; reside in Dallas County, Iowa.

Int. 2. Was you or not one of the board of supervisors of Dallas County, Iowa, in the month of January, A. D. 1864?

(Objected to by deft. because irrelevant & uncompetent and immaterial.)

Ans. I was.

Int. 3. Were you present at the meeting of the board of supervisors of said county which convened on the 4th day of January, 1864; and, if so, how long did said board continue in session at that month?

(Objected to as above.)

Ans. I was present at said meeting of said board which met on
333 January 4th, 1864, and on each subsequent day of that session; the said board continued in session on the 4th, 5th, and sixth days of January, A. D. 1864.

Int. 4. Know you John Warford, of the town of Minburn, in Dallas County, Iowa?

(Objected to as above.)

Ans. I do.

Int. 5. State whether or not said John Warford was acting as deputy clerk of the dist. court and clerk of the board of supervisors at that meeting of said board.

(Objected to as above.)

Ans. He was acting as deputy clerk; but whether he was present and acting at that meeting or not I only know from the record. The record shows that he was.

Int. 7. Examine the record of said board of supervisors for the
334 dates & days of January 4th, 5th, & 6th, 1864, and state whether or not said records were or not made up and written as they now appear, each day of the proceeding of said board as they progressed.

(Objected to as above.)

Ans. I could not be positive about that, but believe they were.

And the witness testified, on cross-examination, as follows:

Int. You say in your direct examination you have no recollection of Warford's being present at the meeting of the board of supervisors in January, 1864. Do you mean to state anything more that that the records show part of them to be in his handwriting?

(Objected to as above.)

Ans. That is what I mean; a part of the records of the proceedings of the board for the three days, to wit, the 4th, 5th, & 6th days of January, 1864, are in the handwriting of Mr. Warford in each day.

335 Int. How many years have you been a member of the board of supervisors, and from what time to what time?

(Objected to as above.)

A. Nine or ten years, commencing the 1st year 1861.

Int. Can you from your memory, independant from the records, pretend to state positively who was present and took down your proceedings at any particular meeting of the board?

(Objected to as above.)

A. No; I could not so far as his assistants were consurned, but I could as to Mr. Norl, for he was present at every meeting of the board.

O. D. SMALLEY.

Sworn to before me and subscribed to in my presence by the said O. D. Smalley this 14th day of January, 1874.

D. W. WOODEN,
Commissioner.

336 No. 523—Date, Jan'y 7, 1864.
Names—Wm. H. Shepherd.
Description—Sec. 7, R. acres.
Adel, 1863. Page 24.

EXHIBIT A.

Kind of tax.	Amt. tax.	Interest.
State	3 28	
County	5 42	
School	1 64	
Road	24	
Corporation		
School-house	16 40	
District	82	
Costs		
Total interest		
Total	27 80	

337 No. 524—Date, Jan'y 7, 1864.
Name—David Updegraff.
Description—Sec. 7, R. acres.
Walnut, 1863. Page 249, 250. Warford.

EXHIBIT B.

Kind of tax.	Amt. tax.	Interest.
State	1 92	
County	2 88	
School	96	
Road	2 40	
Corporation		
School-house		
District	1 92	
Costs	2 88	
Total interest		
Total	$12 96	

338 STATE OF IOWA,
Dallas County:

I, D. W. Wooden, examiner, do hereby that in pursuance of the annexed commission to me directed, and upon my order hereto appended, and notice hereof also appended, I caused to come before me at my office in Adel, Dallas County, Iowa, Cole Norl and O. D. Smalley, who were by me then and there sworn and examined, and such examination reduced to writing by me, and after being by me read over to the said witnesses the same were subscribed and sworn to by them respectively in my presence, and their depositions are now herewith returned. I further certify that William Phillips, of the firm of Phillips & Phillips, appeared for the plaintiff, and that James Callanan, jr., was present and appeared for the defendant, and examined and cross-examined the
339 witnesses. Given under my hand as examiner this 31st day of January, A. D. 1874.

(Sgd.) D. W. WOODEN,
Examiner for the Circuit Court of the United States, District of Iowa.

(Endorsed:) Filed Feb'y 2nd, 1874. George B. Corkhill, clerk.

340 *Dedimus protestatem.*

CIRCUIT COURT OF THE UNITED STATES,
District of Iowa, ss:

To John G. Marks, esq., of Dexter, Dallas County, Iowa, greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested, with full power and authority to examine M. J. Marshall, on his corporal oath, as a witness in a cause pending in the circuit court of the United States, for the district of Iowa, wherein Michael Hurley is plaintiff and James Callanan, jr., and others defendant', on the part of the complainant, upon the interrogatories annexed to this commission. And, therefore, you are hereby commanded that at certain days and places, to be appointed by you for that purpose, you do cause the said M. J. Marshall to come before you, and then and there examine him on oath upon the said interrogatories.

That you propound to the said witness the interrogatories and cross-interrogatories hereto annexed, and cause the same to be written out, and the answers thereto to be inserted immediately following the respective interrogatories. That you cause the whole to be read over to the witness, and the same to be subscribed by him and duly sworn to before you. That you take said deposition, in accordance with your certificate which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned. That you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court at Des Moines, Iowa. That you endorse on the outside of said envelope, thus directed, the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 24th day of January, 1874, and in the 98th year of the Independence of the United States of America.

Attest:
[L. S.] GEORGE B. CORKHILL,
Clerk of United States Circuit Court, District of Iowa.

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded (whether written or oral) to be written out, and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole, being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the deposition and returned with them, unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

341 In the United States circuit court, district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR., AND OTHERS. } In equity.

To the defendants in the above cause:

You are hereby notified that the complainant in the above cause, M. Hurley, will, on the 24th day of January, 1874, sue out of the office of the clerk of the circuit court of the United States aforesaid a commission in the above cause, directed to and empowering John G. Mark, esq., of Dexter, Dallas county, Iowa, to take the deposition of M. J.
342 Marshall, to be read in evidence in the above cause upon the part of complainant on the hearing thereof, and that the following questions will be propounded to said witness:

Int. 1. What is your name, age, and place of residence?

Int. 2. Where did you reside in the month of January, 1864?

Int. 3. Know you John Warford, who was deputy clerk of the district court of Dallas county in January, 1864, and who now resides in Minburn, in said county, and how long have you known him?

Int. 4. Was you or not a member of the board of supervisors of Dallas county, Iowa, in January, 1864?

Int. 5. Was you present at the meeting of said board and during its session held in the month of January, 1864, commencing on the 4th day of January?

Int. 6. How were the records of the proceedings of said board of supervisors kept while you were a member of said board, and especi-
343 ally at the session held January 4th, 5th, and 6th, 1864? Were the proceedings of said board entered of record in the record-book each day as you proceeded with the business of said board, or were they kept upon some other paper or book and afterwards copied into the record-book? Please explain how the said records were kept, and say when your proceedings were entered of record.

7th. Have you examined the record of the proceedings of the board of supervisors for January 4th, 5th, & 6th, 1864, recently? and, if yea, state in whose handwriting they are entered, if you know. And state if you are, or not, familiar with the handwriting of said John Warford.

8th. If the records of the proceedings of said board of supervisors for January 4th, 5th, & 6th, 1864, were made up each day in part and appear in the handwriting of said John Warford, then state whether

344 or not he was or was not present at the meeting of said board on each of said days.

9th. Where did said board of supervisors hold their meetings January 4th, 5th, & 6th, 1864?

10th. Can you say whether or not said John Warford was or was not present at the meeting of said board of supervisors at Adel, Dallas Co., Iowa, January 4th, 5th, & 6th, 1864? If so, state the facts as they exist.

11th. Do you know, or can you set forth, any other matter or thing which *which* may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

PHILLIPS & PHILLIPS,
Attys. for Complainant.

Waiving time for taking commission, we hereby accept service
345 of the foregoing notice & interrogatories, and consent that the testimony of said witness may be taken in this form and manner without special order of the court therefor. Signed this Jan'y 19th, 1874.

BANCROFT & STIDER,
Attys. for Deft.

Deposition.

U. S. circuit court, State of Iowa, Dallas County.

M. HURLEY
vs.
JAMES CALLANAN.

I, M. J. Marshall, on oath, depose and say I will make true answers to the interrogatories which may be propounded to me in the above-entitled action.

Int. 1. What is your name, age, and place of residence?

Ans. 1st. M. J. Marshall. Fifty-six years old. Reside in Dexter, Dallas County, Iowa.

Int. 2nd. Where did you reside in the month of January, 1874?
346 Ans. 2. In Dallas County, Iowa.

Int. 3. Know you John Warford, who was deputy clerk of the district court of Dallas County in January, 1864, and who now resides in Minburn, in said county, and how long have you known him?

Ans. 3. Yes; I know him sixteen years.

Int. 4. Was you or not a member of *of* the board of supervisors of Dallas County, Iowa, in January, A. D. 1864?

Ans. 4. I was.

Int. 5. Was you present at the meeting of said board and during its session held in the month of January, 1864, commencing on the 4th day of January?

Ans. 5. I was.

Int. 6. How were the records of the proceedings of said board
347 of supervisors kept while you were a member of said board, and especially at the session held January 4th, 5th, & 6th, 1864? Were the proceedings of said board entered of record in the record-book each day as you proceeded with the business of said board, or were they kept upon some other paper or book, and afterwards copied into the

record-book? Please explain how the said records were kept, and say when your proceedings were entered of record.

Ans. 6th. As a general thing, they were put direct to the record-book; yet in some cases they were put on slips of paper to be afterwards entered of record.

Int. 7. Have you examined the record of the proceedings of the board of supervisors for January 4th, 5th, & 6th, 1864, recently? And, if yea, state in whose handwriting they are entered, if you know; and state if you are or are not familiar with the handwriting of said John Warford.

348 Ans. 7. Have not examined the records recently, neither am I familiar with the handwriting of John Warford.

Int. 8. If the records of the proceedings of said board of supervisors for January 4th, 5th, and 6th, 1864, were made up each day in part, and appear in the handwriting of said John Warford, then state whether or not he was or was not present at *at* the meeting of said board on each of said days.

Ans. 8. Cannot say if he was present or not.

Int. 9. Where did said board of supervisors hold their meetings January 4th, 5th, & 6th, 1864?

Ans. 9. They held them in the court-house at Adel, the county-seat.

Int. 10. Can you say whether or not said John Warford was or was not present at the meeting of said board of supervisors at Adel,

349 Dallas County, Iowa, January 4th, 5th, & 6th, 1864? If so, state the facts as they exist.

Ans. 10. Can't say if John Warford was present or not.

Int. 11. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

Int. 11. I do not know of anything relative to the case.

(Sgd.) M. J. MARSHALL.

Subscribed and sworn to by M. J. Marshall, before me, this 30th day of January, 1874,

[L. S.] (Sgd.) J. G. MARK,
Notary Public.

Witness' fees, $1.50—Notary fees, $2.50	$4 00
Postage	10
Total	$4 10

350 (Endorsed:) Filed Feb'y 2, 1874. George B. Corkhill, clerk.

[Dedimus protestatem.]

351 CIRCUIT COURT OF THE UNITED STATES,
District of Iowa, ss:

To any notary public in and for the county of Fremont, in the State of Iowa, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine J. N. Cornish, on his corporal oath, as a witness, in a cause depending in the circuit court of the United States for the dis-

trict of Iowa, wherein M. Hurley is plaintiff, and James Callanan, jr., and others defendant', on the part of the complainant, upon the interrogatories annexed to this commission; and therefore you are hereby commanded that at certain days and places, to be appointed by you for that purpose, you do cause the said J. N. Cornish to come before you, and then and there examine him on oath upon the said interrogatories; that you propound to the said witness the interrogatories and cross-interrogatories hereto annexed, and cause the same to be written out, and the answers thereto to be inserted immediately following the respective interrogatories; that you cause the whole to be read over to the witness, and the same to be subscribed by him and duly sworn to before you; that you take said deposition, in accordance with your certificate, which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned; that you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court at Des Moines, Iowa; that you endorse on the outside of said envelope, thus directed, the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 24th day of January, 1874, and in the 98 year of the Independence of the United States of America.

Attest:

[L. S.] GEORGE B. CORKHILL,
Clerk of United States Circuit Court, District of Iowa.

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded (whether written or oral) to be written out, and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole, being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the deposition, and returned with them, unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

352 In circuit court United States, for district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR., AND OTHERS. } In equity.

To the defendants in the above cause:

You are hereby notified that the complainant in the above entitled cause will, on the 24th day of Jany., A. D. 1874, sue out of the office of the clerk of the circuit court of the United States aforesaid a commission directing and empowering any notary public in and for the county of Fremont, in the State of Iowa, to take the deposition of J. N.
353 Cornish, to be read in evidence upon the hearing of the above

cause, on the part of complainant, and that the following interrogatories will be propounded to said witness on part of complainant:

Int. 1. What is your name, age, and place of residence?

Int. 2. How long have you resided in Fremont County, Iowa?

Int. 3. Know you John Warford, of Dallas County, Iowa, and did you know him in the latter part of the year 1863 and early part of the year 1864?

Int. 4. Did you or not, in the latter part of the year 1863, or in the early part of the year 1864, ride in the stage-coach with said John Warford to Lewis, in Cass County, Iowa? If so, state from what point you rode in company with him in the stage to Lewis, in Cass County, Iowa, and state if you ever rode with him in the stage but once about that time to Lewis, in Cass County, Iowa. State fully as to time, cir-
354 cumstances, and occasion of your trip.

Int. 5. Did said Warford say anything to you, or in your hearing, in regard to tax-sales in Cass County, or in regard to his purchasing, or intending to purchase, any land at such tax-sale, or otherwise express the purpose of his trip to Cass County, Iowa? If so, please state what he said, if you remember; and if you cannot remember what he said, state, if you know, the business of said Warford at Cass County at that time from what he said, or otherwise?

6th. Know you, or can you set forth, any other matter or thing of advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and *of* large in your answer.

PHILLIPS & PHILLIPS,
Attys. for Complainant.

355 The defendants waive time for sueing out commission, and consent that said deposition may be taken before a notary public, instead of naming a commissioner in the commission, and we accept service this Jan'y 21st, 1874, and waive objection to taking evidence by deposition.

J. R. BARCROFT,
Atty. for Deft.

Deposition of witness produced, sworn, and examined at Hamburg, in the county of Fremont, and State of Iowa, before me, Henry F. White, a notary public in and for said county of Fremont, in the State of Iowa, in pursuance of the annexed commission to me directed, in an action now pending in the circuit court of the United States for the district of Iowa, wherein M. Hurley is plaintiff, and James Callanan, jr., and others are defendant, on behalf of the plaintiff.

356 J. N. CORNISH, being produced, sworn, and examined on the part of the plaintiff, deposed as follows, to wit:

Int. 1. What is your name, age, and place of residence?

Ans. My name J. N. Cornish; age is thirty-five years; residence, Hamburg, Iowa.

Int. 2. How long have you resided in Fremont County, Iowa?

Ans. Fourteen or fifteen years.

Int. 3. Know you John Warford, of Dallas County, Iowa, and did you know him in the latter part of the year 1863 and early part of the year 1864?

Ans. I knew him about that time; that is, in 1863 and 1864.

Int. 4th. Did you or not, in the latter part of the year 1863, or in the early part of the year 1864, ride in the stage-coach with said John
357 Warford to Lewis, Cass County, Iowa? If so, state from what point you rode in company with him in the stage to Lewis, in Cass County, Iowa, and state if you ever rode with him in the stage but once about that time to Lewis, in Cass County, Iowa; state fully as to time, circumstances, and occasion of your trip.

Ans. I rode with said John Warford in the stage-coach, from Adel, Dallas County, Iowa, to Lewis, Cass County, Iowa, the latter part of November, 1863, or about the 17th day of January, 1864, I can't tell which; I have no recollection of riding with him in the stage-coach but once about that time. I know that it was after the 16th day of January, 1864, that I made a trip from Des Moines to Council Bluffs in stage-coach by way of Lewis, Cass County, Iowa; for on the night of the 16th day of January, 1864, the board of enrollment and their
358 clerks of the then fifth congressional district, in the city of Des Moines, invited me to a late supper and there presented me with an album on my taking leave of them as the former commissioner of said board; and I think I left Des Moines for home the next morning or on the morning of the 17th day of January, 1874. I know that I made the same trip the last of November, 1863, for home, as I find by reference to my letters that I went at that time, and that I took leave of my home, then Sidney, on the 4th day of December, 1863, for Des Moines, in stage-coach, and arrived there *there* at Des Moines about the 8th of December, 1863. I made no trips in stage-coach to Lewis, or west of Des Moines, about that time, since the two above referred to.

Int. 5. Did said Warford say anything to you or in your hearing in regard to tax-sales in Cass County, or in regard to his purchasing or intending to purchase any lands at such tax-sale, or otherwise
359 express the purpose of his trip to Cass County, Iowa? Also please state what he said, if you remember, and if you cannot remember what he said, state, if you know, the business of said Warford, at Cass County, at that time, from what he said or otherwise.

Ans. I cannot now remember what he said nor the import thereof, and of course not remembering what was said I could not tell his business.

Int. 6. Know you, or can you set forth any other matter or thing of advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I cannot now think of anything more that is material to the case; think I have stated all I know.

J. N. CORNISH.

360 Sworn to before me and subscribed in my presence, by the said J. N. Cornish, this 29th day of January, 1874.

[Sgd.] H. F. WHITE,
Notary Public.

STATE OF IOWA, *Fremont County, ss:*

I, Henry F. White, a notary public in and for said county and State, or within and for Fremont County, State of Iowa, do hereby certify that, in pursuance of the annexed commission to me directed, I caused to come before me, at my office in Hamburg, in the county of Fremont, and State of Iowa, J. N. Cornish, on the 29th day of January, 1874, who

was then and there by me sworn and examined; such examination reduced to writing by him, and after being read over carefully by the said witness, J. N. Cornish, the same was subscribed by him and sworn to by him in my presence and before me, and his deposition is now
361 herewith returned. And I further certify that neither of the parties nor the agent or attorney of either was present during the examination of said witness.

Given under my hand and official seal, hereto affixed, this 29th day of January, 1874, at Hamburg, in Fremont County, State of Iowa.

[L. S.] [Sgd.] H. F. WHITE,
Notary Public.

Fees:

For taking dep	5 00
Witness	2 50
Postage	12
	$7 62

Paid by plaintiff.

(Endorsed:) Filed Feb'y 2nd, 1874. George B. Corkhill, clerk.

362 United States of America, northern district of New York.

STATE OF NEW YORK, *County of Browne:*

Be it remembered that on this twenty-sixth day of January, in the year of our Lord one thousand eight hundred and seventy-four, I, William B. Edwards, county judge of the county aforesaid, and duly commissioned & qualified under the laws of the United States to take depositions for use in the circuit courts of the United States, did call & cause to be & personally appear before me, at my office in the city of Binghamton, in the said northern district of New York, in the State
363 aforesaid, Howard James, to testify & the truth to say, on the part & behalf of the plaintiff in a certain suit now depending & undetermined in the circuit court of the United States for the district of Iowa, at Des Moines, in the district aforesaid, wherein Michael Hurley is plaintiff, and James Callanan, jr., & Dexter Reynolds & O. Mead defendants.

And the said Howard James, being about fifty-five years of age, & having been by me first cautioned & sworn to testify the *the* truth, the whole truth, & nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Howard James, & he did thereupon depose, testify, & as follows, viz:

I reside in the city of Binghamton, in the State of New York. My name is Howard James. My age is forty-five years. I have no occupation. I know Dexter Reynolds, of the city of Albany. I have
364 known him for thirty years last past. I had dealings with him in regard to the purchase of land in the West, from 1860 or 1861, for five years, until 1865 or 1866. In 1860 or 1861 I gave him fifteen thousand dollars, at Albany, with which to purchase western lands, then selling for non-payment of taxes. Reynolds was equally interested with me in the purchase, and in the profit arising therefrom. He was to pay me interest upon the fifteen thousand dollars which I let him have, and one half of the profits besides. He paid me the interest and profits for five years according to the agreement before stated. I do not know, of my own knowledge, in whose name the lands were pur-

chased, but I suppose in the name of Dexter Reynolds. I never knew that the defendant, O. Mead, had anything to do with the transaction. Reynolds and Mead reside in Albany, which is 142 miles from
365 Binghamton.

HOWARD JAMES.

Taken and subscribed before me January 26, 1874.

W. B. EDWARDS,
County Judge of the County of Browne.

UNITED STATES OF AMERICA,
Northern District of New York,
State of New York, County of Browne, ss :

I, William B. Edwards, county judge of said county of Browne, and duly commissioned & qualified under the laws of the United States to take depositions for use in the circuit courts of the United States, do hereby certify that the reason for taking the said deposition is, that the testimony of the said witness is material & necessary for the plaintiff in the cause in the caption of the said deposition named, and that the said witness lives & did live at the time of taking said deposition in the city of Binghamton, county of Browne, & State of New
366 York, the same being at a greater distance than one hundred miles from Des Moines, Iowa, where the court at which it is expected said cause will be tried was appointed by law to be held, to wit, more than five hundred miles therefrom. I further certify that no notification of the time and place of taking the said deposition, signed by me, was made out & served on the adverse parties, or their attorney, to be present at the taking of the said deposition, & to put interrogatories, if he or they might think fit. That the defendants in the cause in caption in the said deposition named, the said adverse party, reside and then resided, and the attorney for said adverse parties resides and then resided, more than one hundred miles from the said city of Binghamton, in the State of New York, the place of caption to the foregoing deposition being the place where the same was taken.

I further certify that on the twenty-sixth day of January, A.
367 D. 1874, I was attended at my office, in the city of Binghamton aforesaid, by the witness Howard James, who was sound mind & lawful age, and the witness was by me carefully examined, & cautioned, & sworn to testify the truth, the whole truth, & nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, & from his statements, and after carefully reading the same to the witness he subscribed the same in my presence. I have retained said deposition in my possession for the purpose of sealing up, I directing the same, with this certificate of the reasons aforesaid for taking said deposition, with my own hand, to the court for which the same was taken. And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition & caption named, or in any way interested in the event of the said cause named in said caption.

In testimony whereof I have hereunto set my hand, and caused
368 the seal of said county of Browne to be affixed, this twenty-sixth day of January, in the year of our Lord one thousand eight hundred & seventy-four.

[L. S.] (Sgd.) W. B. EDWARDS,
County Judge of the County of Browne.

(Endorsed :) Filed Feb'y 2, 1874. George B. Corkhill, clerk.

369 In circuit court United States, dist. of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR., AND OTHERS. } In equity.

It is hereby agreed that the following deposition of E. W. Davenport, taken by complainant, may be taken before D. F. Callander, esq., a notary public, and be read on the hearing of said cause, without obtaining leave of court for the taking thereof.

April 18th, 1874.

WM. PHILLIPS,
Atty. for Complt.
J. R. BARCROFT,
For Defts.

E. W. DAVENPORT, being first duly sworn, deposes and says as follows:

370 Int. 1. Are you the E. W. Davenport whose deposition was heretofore taken in this cause, at Council Bluffs, before J. H. Keatley, esq.?

Ans. Yes, sir. I had my dep. taken before him.

Int. 2. State whether or not since the taking of said deposition you have examined any of the records of the treasurer's office of Cass County, Iowa, or connected therewith for the year 1864 and prior years?

Ans. I have examined the records of the sale of January 4th, 1864, since that time.

Int. 3. How long prior to the giving of your former deposition in this cause had it been since you had then seen said records?

Ans. Don't remember when I had seen them prior to that time.

Int. 4. Had you said records before you at the giving of your former deposition?

371 Ans. No, sir.

Int. 5. Are you able to now state whether or not John Warford, whose deposition has been taken in this case, was or was not at the treasurer's office in Cass County, Iowa, on the 4th day of January, 1864?

Ans. I am not able to state positively, but my impression is he was not there.

Int. 6. State as near as you can from your recollection, aided by an examination of the records of Cass County, about what time in the month of January, 1864, said John Warford came to Cass County to make purchases for Meads and Reynolds as stated in your answer to eighth direct question in your former deposition?

(Objected to by the defendant as far as it asks for any aid witness has received from the record, for the reason that the witness can only give his own recollection and cannot state any inference he may draw from the appearance or condition of the record unless after examining
372 the record his recollection is so refreshed that he recollects the fact independently of the record.)

Ans. I think it must have been about ten days or two weeks after January 4th.

Int. 7. What business was you employed in at the time Warford came there in 1864 to make these purchases for Reynolds and Meads?

Ans. I was acting as clerk of Mr. Dickerson, the county treasurer.

Int. 8. Where was your office or place of business at that time as such clerk?

Ans. In the office occupied by Mr. Dickerson, as county treasurer, in what was known as the court-house. It was the treasurer's office.

Int. 9. How many rooms were there in said treasurer's office at that time?

373 Ans. One.

Int. 10. Were you present in the treasurer's office at the time said Warford and the treasurer, Dickerson, were engaged in looking over the tax-lists or selecting lands for Reynolds & Mead, during Warford's business to the treasurer's office in January, 1864?

(Objected to by deft. as assuming that Warford and the treasurer looked over and selected lands for Reynolds & Meads, which is neither conceded nor proved.)

Ans. I was in there when Mr. Warford and Dickerson were there, at least a portion of the time.

Int. 11. State what portion of the time, and how long Warford was there.

Ans. I cannot state what portion of the time. I remember of seeing Mr. Warford in the office. Couldn't state how long he was there.

374 Int. 12. Was you or not engaged in the treasurer's office in your duties as clerk during the business hours of the days on which Warford was there?

(Objected to as leading and suggestive, the witness having stated that he did not know how many days Warford was there.)

Ans. I must have been. I was engaged nearly every day that month.

Int. 13. State whether or not you was or was not engaged in the performance of your duties as clerk to the treasurer and in his office during the day or days when said Warford was in the treasurer's office in the month of January, 1864, during the business hours of the day or days.

Ans. I must have been, as I was engaged nearly every day in that month after January 4th.

375 Int. 14. State, if you remember, about how many days or parts of days you saw Warford in the treasurer's office of Cass County at that time.

(Objected to by deft. as immaterial.)

Ans. I cannot state definitely; my impression is that he came one day and went the next.

(Answer objected to so far as it states witness' impression, having stated that he had no recollection as to the number of days.)

Int. 15. In what part of the room (the treasurer's room) were Warford and Dickerson while transacting their business on that occasion?

Ans. I remember of seeing them at a table which was on the east side of the room.

Int. 16. In what were they engaged at that time?

(Objected to, having been previously inquired about in a former deposition.)

Ans. I don't remember.

376 Int. 17. Who was in the treasurer's office besides yourself, Warford, and Dickerson at the time Warford was having his interviews with Dickerson, or was any one?

Ans. I do not remember.

Int. 18. State whether or not any of the lands certified to O. Meads and Dexter Reynolds as being sold to them at the January sale, 1864, were or were not sold to John Warford, as their agent, separately or in separate tracts, or how disposed of to him by the treasurer?

(Objected to, 1st, because immaterial and incompetent; 2nd, because the same questions were asked in a former deposition of the witness in

answer the interrogatories of plaintiff in said deposition testifies, "I cannot remember anything about it, only the general results, and that the land might have been all called off.")

377 Ans. I cannot remember positively, but I am of the opinion that there was not a piece offered separately. Now I wish to state further that this answer gives a different impression than some of my answers in a former deposition. Since that deposition was taken I have thought of the subject more than I had for the previous five or six years, and the circumstances seem fresher in my memory than they did at that time.

(So much of the answer objected to as states the opinion of the witness.)

Int. 19. You will please state from your recollection, and not from opinion, whether said lands, or any part of them, were or were not sold to said Warford separately or in separate tracts, if you have any recollection on the subject as contradistinguished from opinion.

(Objected to as a repetition of the question last asked and answered, the witness having stated that he could not state positively as to

378 the fact, but gave his opinion simply, and also for the reason stated as objections to the last question.)

Ans. My best recollection is that they were not offered in separate forties or tracts.

Int. 20. State, if you have any recollection on the subject, whether or not there was or was not any of these lands that was certified to Meads & Reynolds offered and sold at public outcry at the time when Warford was in Cass County in January, 1864?

(Objected to. 1st, because immaterial; 2nd, because incompetent; 3rd, because the witness was previously produced by the plaintiff and interrogated upon the same point, and having answered thereto that he did not know, & that it might have been, the plaintiff is bound thereby, & cannot impeach the witness by having him contradict himself.

Ans. I do not think there was.

379 Int. 21. Have you examined the record of the treasurer's office of Cass County, Iowa, since giving your former deposition? &, if so, state whether or not there was or was not any record made of the sales of these lands to Reynolds & Meads in the treasurer's office when Warford was there in January, 1864, and prior to the time you made out the certificate to Reynolds & Meads therefor.

(Objected to because immaterial; 2nd, because incompetent; 3rd, because it asks for the conclusion or result to which the witness arrived, and not for the record.)

Ans. I have examined the records. The records all bear date January 4, 1864.

Int. 22. You were asked on you former examination, in interrogatory No. 32, to state who marked the lands on the books as sold to Wheeler & Bartlett; can you now tell, since having examined the records, who so marked the lands sold to Wheeler & Bartlett?

(Objected to same as to int. 21.)

380 Ans. I made the record of the sale in the sale-book, and marked against the lands on the tax-list the word sold, giving the name of the purchaser in quite a number of instances, possibly all of them.

Int. 23. What had you to guide you in making out these certificates to Reynolds & Meads at the time you made them out, and how did it occur that you made Reynolds to land in one part of the county and to Meads in another?

(Objected to same as to interrogatory No. 21.)

Ans. I suppose the printed tax-list and tax-books is what guided me. My best recollection is that Mead was to have so many dollars' worth in one part of the county, and Reynolds was to have so many dollars' worth in another part of the county.

Int. 24. How did you know the particular pieces or tracts of land to certify to Meads, and the particular pieces or tracts to certify to
381 Reynolds; what guided you in these particulars as clerk of the treasurer in making out these certificates?

(Objected to for same reasons as to int. No. 21.)

Ans. I think each party was to commence at a certain point and take them in rotation, or as they came, until a certain amount in dollars and cents was reached for each.

Int. 25. State whether you did or did not make out these certificates for all lands delinquent for taxes as they came in regular order in the locality selected for each party, or whether or not there were any pieces or tracts omitted in making out these certificates; and, if any omitted by you, how did you know what piece to omit and what to certify to Reynolds & Meads?

(Same objection as to 21.)

Ans. It was understood that if any tract or piece was wanted
382 by any one in the town or county, they were to have it; if not, it was to be certified to Meads or Reynolds.

Int. 26. If there was any lands having taxes due for any certain period of time or years entered into this selection as your guide in making out these certificates, state what it was.

(Same objection as to int. 21.)

Ans. Reynolds and Meads were not to have certified to them any lands that had taxes delinquent thereon for more than two or three years.

Int. 27. In answer to the 23 interrogatory you say you suppose you had the printed tax-list & tax-books to guide you in making out these certificates to Reynolds and Meads. If they guided you any further than merely to show the tracts of lands delinquent for taxes, and the taxes due thereon, please state how and in what manner they guided you as to the particular pieces to be certified to Reynolds and Meads.

(Objected to same as to int. 21.)

383 Ans. I think they were only a guide as to what was for sale and how much was due on each piece.

Int. 28. Did you make out all of these certificates to Reynolds and Meads yourself, as clerk of the treasurer, or not?

Ans. I think I did.

Int. 29. State whether or not any of said certificates were made out while Warford was at the treasurer's office in 1864; and, if so, how many? And if none was made out while he was there, state how soon after he left you commenced to make these certificates to Reynolds & Meads.

(Objected to for same reasons as to int. 21.)

Ans. I think none were made out while he was there; possibly we may have commenced on them the next day.

Int. 30. From whom did you receive your instructions as clerk of the treasurer as to what lands to issue certificates for to Reynolds and
384 Meads, and as to what part of the county you should certify tax-lands to Reynolds, and in what part you should certify lands to Meads?

(Objected to same as to 21.)

Ans. I presume from Mr. Dickerson, the county treasurer, as I was at work for him.

Int. 31. State when you received these instructions from the treasurer or from who you received: I mean whether before you commenced making out these certificates for Reynolds and Meads or from time to time as you progressed with the work of making them out.

(Objected to because it assumes that the witness did receive instructions, when his testimony is only that he presumes that he received instructions from Dickerson, but does not know but that he made them out from the tax-list from which they were sold, and on which the sales were marked at the time they were sold.)

385 Ans. I presume I received the instructions before I went to work. My best recollection is that I received these instructions before I went to work at making out the certificates.

Int. 32. While you were engaged in making out these certificates did you or did you not make selections of tax-lands for yourself or for others for whom you were acting as agent? and, if yea, state about how many pieces you selected in that manner during the making out of these certificates by you for Reynolds and Meads, and state whether you did or did not issue certificates at the same time for those lands you selected for fourself and your principals, and state why you made such selections for yourself and for those whom you acted.

(Same objection as to No. 21.)

386 It was understood that if any one in the place or county wanted any certain tract of land they would have it, and we acted under that understanding. While I was making out those certificates for Reynolds and Meads I did make selections for others, and made certificates for them; cannot remember how many. I cannot give reasons why we so selected them, but I know we did, and the records so show it.

Int. 33. Were these selections made by you, and certificates issued without sale so made, with the knowledge of Dickerson, the treasurer, or not, and was he or was he not a party to the understanding that it should be so done?

(Same objections as to No. 21.)

Ans. It was so understood by all parties. It was an agreement between Mr. Warford and all parties, including Mr. Dickerson.

(Answer objected to because it states the understanding of the witness and not a fact that he remembered, the witness having re-

387 peatedly testified that he had no conversation with Mr. Warford or Mr. Dickerson.)

Int. 34. Know you whether or not the treasurer, Dickerson, acted as agent for any parties in selecting for them tax-lands in 1864, January, and causing the same to be certified to them? and, if so, state the facts as you remember them.

(Same objection as to No. 21.)

Ans. I think he did, but am not positive.

Cross-examination:

Int. 1. How often have you been examined as a witness in relation to that sale of January 4, 1864?

Ans. I think this is the third time.

Int. 2. When and where and in what case was you first examined?

Ans. In Council Bluffs. Don't remember when. In Marshall

388 Key's office, and a man by the name of Gregg wrote the deposition. Don't know what case it was in.

Int. 3. Was it not the case of Everett vs. Callanan?

Ans. Callanan was one of the parties, but I cannot remember the others.

Int. 4. About how long ago was that?

Ans. I cannot remember positively. Two or three years, possibly longer.

Int. 5. How long was it before your former deposition in this case was taken?

Ans. I cannot remember definitely.

Int. 6. Was not your attention called to all the circumstances attending that sale, that came under your observation, in both of said previous examinations, and was not your recollection as good at that time as two or three years later?

Ans. I presume my attention was called to the circumstances,
389 but cannot remember. I presume my general recollection was as good at that time; I had hardly thought of the matter for a number of years.

Int. 7. Do you mean to say that your attention had not been called to the circumstances for several years previous to your second examination, being your former examination in this cause?

Ans. No, sir; I mean the first examination more particularly, although I had thought but very little about it, and do not remember of conversing with any one about it between the two examinations particularly.

Int. 8. Do you mean to say that you had thought but very little about it when you gave your evidence the first time you were examined as a witness?

Ans. I mean to say that the first time I was examined in regard to the sale of 1864 I had been away from Cass County some
390 time, only visiting that county but once or twice during the time; that the records and scenes therewith connected had been out of my mind and out of my sight, and had I visited that place just before giving my evidence, or some two or three months prior to it, my memory would have been refreshed in relation thereto.

Int. 9. Was not your attention in your first examination called specially by interrogatories-in-chief and upon cross-examination, and your recollection thereby refreshed as to every fact and circumstance about which you testified either in your former examination or your present examination in this case?

Ans. I cannot remember positively, but I do remember one instance when some party showed me the record of my former deposition; cannot say who it was, but think it was Mr. Callanan.

391 Int. 10. (Question repeated.)

Ans. I can't remember anything farther than as I have stated.

Int. 11. Can you remember any fact or circumstance that your attention has been called to in this examination that was not inquired about in both of the other examinations?

(Objected to because not proper x-ex., as it embraces a former examination not had in this cause.)

Ans. I cannot remember that there is any new fact called out. I don't think of any; possibly there has been.

Int. 12. Before your first examination in this case had not your recollection been refreshed by calling your attention to all the facts and circumstances inquired about in your previous examination?

Ans. They had to a certain extent.

Int. 13. Previous to your second examination had you examined
392 the records of Cass County?

Ans. I was in Cass County between the two examinations, but

do not know whether I examined the records with relation to the sale of Jan., 1864, or not, but think I did not.

Int. 14. How could the examination of the record refresh your recollection as to any fact not contained in it?

Ans. The same as looking over any record would bring to mind facts connected with it.

Int. 15. What fact or circumstance, as distinguished from impression or opinion, do you remember now that you did not remember on your former examination in relation to the purchase by Warford in Jan., 1864?

Ans. I now remember that quite a number of tax-sales were recorded and certificates made out prior to the commencement of Meads
393 & Reynolds'. My memory is refreshed in regard to this from looking at the record and seeing the record made then.

Int. 16. I ask you for a single fact in relation to the sale to Warford that you now recollect, that you did not recollect upon your former examination, as to which your memory has been refreshed by your examination of the record, that does not appear on the record.

(Objected to because not proper x-ex., and because the inquiry should be limited to special matters as to which the witnesses memory is or is not refreshed, and as to what appears of record and what does not, & the question should not be general; the record is the best evidence.)

Ans. I do not now remember of a single fact except what the records have brought up to my mind by looking them over.

394 Int. 17. What fact has the record brought to your mind that does not appear upon the record in relation to the sale to Warford?

Ans. It brings to my mind this fact or circumstance, that when I commenced to work for Dickerson, Jan. 4th, 1864, as I stated in my former deposition, I first recorded the sales made to Barton, Garvin, Keyes Peck & Co., John Keys, M. D. Bartlett, and W. B. Wheeler, that with other work that I did must have taken me ten days or two weeks, about which time I think Mr. Warford made his appearance, and I think I went to work on O. Meads' certificate the day after Mr. Warford left. If I am not mistaken, the inference given in my last deposition was that Mr. Warford was at Lewis on or about Jan. 4, 1864, possibly a few days earlier or a few days later.

Int. 18. And you now say you think with reference to the time
395 that Mr. Warford came, and that you so think from the examination of the record. Now, is not your belief a mere opinion gathered from your examination of the record, and not from a recollection of the fact as to the time of his coming?

Ans. The statement given is my best recollection, strengthened and refreshed by the record. I am not enough of a scholar to distinguish whether it is an opinion or a refreshing of the memory. This I do know: By examining of the record, I firmly believe that Mr. Warford was there later than I represented in that examination.

Int. 19. When did you examine the record, at whose instance, for what purpose, and how did the plaintiff know that your opinion or impression had been in any manner changed from your former testimony?

Ans. Some time last fall my correspondent, Bartlett & Wheeler,
396 for whom I bid off lands at the same tax-sale, were sued in relation to some lands Bartlett holds in Cass County.

I went to Cass Co. to examine into the matters pertaining to that case, and made a particular examination in relation to the sale of Jan. 4, 1864. Afterwards, some time during the winter, I met Mr. M. Hurley, plaintiff

in this suit, at Council Bluffs, and was relating to him the circumstances in relation to the tax-title suit of my friend Bartlett, which had then been commenced in Cass County. During that conversation, and in connection with the history I was giving him of the suit, I either told him, or he inferred from some remark I made, that I had changed my opinion in regard to Warford's being in Cass County. I suppose this must be the way that plff. became aware of the fact. I know of no
397 other way by which he could have become possessed of it.

Int 16. Did you have any previous acquaintance with Hurley?

Ans. I met Mr. Hurley at the time of taking my first deposition in this case, I think. Don't remember of having met him from that time until the time of the conversation related in the last answer.

Int. 17. Did you meet him then by appointment or accidentally?

Ans. Accidentally. He was stopping at the hotel where I was boarding.

Int. 18. State as near as you can when that was.

Ans. I cannot postively, but think about the first of Jan., 1874. It might have been as late as February.

Int. 19. Did you give him to understand in that conversation
398 that you had changed your mind or opinion in relation to anything else besides Warford's coming to Cass County?

Ans. I do not remember that I did, but may have done so.

Int. 20. When were you last at Atlantic to examine the records, and when, how, and by whom was the arrangement made with you to come here and have your evidence taken?

Ans. I was in Atlantic; arrived there about noon the 13th day of this month, and remained there until about six o'clock on the 17th day. When I saw Mr. Hurley in the Bluffs he wanted to have my deposition taken then, or as soon as he could make an arrangement to do so. I objected because I wished to go away, and told him if he would let me off and not do anything about it that month, I was coming
399 to Atlantic some time the last of March to take deposition in the case of Whitney vs. Bartlett, at which time if it suited him I would rather have it taken.

Int. 21. State who you purchased lands for at the tax-sale Jan., 1864, in Cass County.

Ans. M. D. Bartlett, W. D. Wheeler, and myself. M. D. Bartlett is my sister and W. D. Wheeler is my cousin.

Int. 22. Do you or either of the parties for whom you purchased still retain the lands purchased by you at the January sale, 1864?

Ans. M. D. Wheeler does not; M. D. Bartlett has a few pieces left, three or four forties, I think, and some town lots; I have nothing left.

Int. 23. In what town are those lots situated, and what are their value compared with the amount of taxes, penalty, interest, and costs on them?

400 (Objected to by plff.)

They are in the town of Lewis. I hardly think they would sell to-day for the amount of taxes, penalty, and costs already invested in them.

Int. 24. When did you and they dispose of your respective interests?

Ans. July 13, 1869, Bartlett's interest was sold out, and Wheeler's February previously.

Int. 25. Did you take a memorandum of the names of persons to whom you made certificates of sales of Jan., 1864, *certificates of sales of Jan.*, 1864, previous to the time that Warford came?

Ans. I do not remember whether we took names of them or not; par-

ties came in and told what they wanted, and we made out certificates and recorded them; that is my impression.

Int. 26. Give the names of parties that purchased before Warford's arrival, according to your impression.

Ans. Barton, Garvin, Keyes, Peck & Co., Jno. Keys, M. D. Bartlett, M. D. Wheeler. This all that I can recall at present, unless it *unless it* might be a man by the name of Beebe.

Int. 27. Were there any persons who purchased after Warford?

Ans. A man by the name of Meredith made some purchases, but I can't remember when it was done. I may be mistaken about this, but that is my impression. I think there was a man by name of Baird made some purchases.

Int. 28. Had you purchased for yourself, Bartlett, and Wheeler before Warford came?

Ans. Yes, I made some purchases prior to his coming there.

401 Int. 29. Was Meredith or Baird present at the time Warford was there?

Ans. I hardly think Baird was there at all during the winter. Meredith lived in the country, and was liable to be in there any day; can't state whether he was there or not.

Int. 30. Did you have any conversation with Warford after he came and before he purchased in relation to his purchasing, that you can recollect?

Ans. I talked with Mr. Warford in the office, and at the hotel, but cannot now remember what it was about or whether we conversed or not; most likely we did, though.

Int. 31. Did you hear any conversation with Mr. Warford and any of the purchasers at that tax-sale, or between him and Mr. Dickerson, the treasurer, in relation to his purchasing lands at said sale, that you can recollect of?

403 Ans. I cannot remember of any conversation that I heard between Mr. Warford and any party there.

Redirect ex.:

Int. 1. In answer to 33d question direct, you say, "It was understood by all parties, it was an agreement between Mr. Warford and all parties, including Mr. Dickerson," and in your last answer on cross-examination you are made to say that you cannot remember of any conversation you heard between Mr. Warford and any party there; are both of these answers correct, and, if not, explain the same?

Ans. The last answer should have excepted the agreement made by Mr. Warford that it any party of the town or county wanted any particular piece they could have it. I also now remember Mr. Warford's paying Mr. Dickerson some money in the treasurer's office.

Recross-examination:

404 Int. 1. If it should turn out on an examination of the record again that neither Meredith or Baird purchased any land at that sale after Warford came, and were not there at the time that Warford was there, and if you are not mistaken in testifying that all of the other persons purchased before he came, are you not most likely mistaken as to his having made any such remark?

Ans. I may be mistaken in regard to Meredith, and it is possible I am mistaken about Baird and Beebe, for I do not remember ever seeing Baird or Beebe, but I have testified in regard to them from the best of my knowledge and belief, and still believe that Baird and Beebe made purchases at that sale or names similar to them, but as to the agreement

with Warford, I am quite positive. I remember more from the general results and of my having for Bartlett and Wheeler what I wanted, and of my making the selections of the same, as I came to them, during
405 the next two months that I was engaged in making out certificates.

Int. 2. Were you mistaken in saying that you selected for Bartlett, Wheeler, and yourself before Warford came?

Ans. I think not, sir; I made them before and afterwards, too.

Int. 3. Did you make any while Warford was there?

Ans. I can't say; don't think I did, but might have done so.

Int. 4. Was Warford present at any time you did make any?

Ans. I cannot remember what I did do while Warford was there.

Int. 5. What do you mean by saying that you testify or knew from general results rather than from memory?

Ans. What I mean by general results is that any party had any particular piece they wanted, and whenever they called or asked for
406 it it was given to them.

Int. 6. But why should Warford have made any such remark when there were no bidders present when he was there to make it to?

Ans. My impression is that there was no offer of lands or any regular sale, but any party coming in either on the 4th of January or afterward for two months had what they wanted if a certificate had not already been made out for it and recorded. When Mr. Warford was there, I think, Mr. Dickerson was expecting that some parties in the country would want certain pieces, and in lieu of that had this general understanding, that if any one in the town or county wanted any certain piece they could have it, and all of the sales were considered as of Jan. 4th, 1864.

Int. 7. Do you now pretend that you recollect any conversation between Mr. Warford and Mr. Dickerson or any other person or per-
407 sons, in which any such remark was made, or that you can state when and where such conversation was had, what was said, or who was present?

Ans. What I mean is I remember Mr. Warford's paying him some money in the office; cannot remember particularly what was said about the money or how much was paid. The balance was to be paid as soon as the certificates were made out. I also remember the general agreement of parties in town or county taking what they wanted. I cannot remember who was present at the time Mr. Warford was there.

Int. 8. If you recollect the conversation itself why did you answer that you knew by general results in stating your means of knowledge?

Ans. Perhaps a better expression would have been if I had said and by general results.

Int. 9. At the time of this conversation between Warford and
408 Dickerson, do you know whether there was any other person present besides yourself?

Ans. I cannot remember whether there was any one present or not.

Int. 10. Are you sure that this conversation was had at the time that Warford paid the money to Dickerson?

Ans. It must have been at or very near the same time, I think.

Int. 11. How soon after that did Warford leave?

Ans. I cannot remember.

Int. 12. Was all of the delinquent lands sold at that sale?

Ans. I do not remember whether they was or not.

Int. 13. Did not you sell for your sister, M. B. Bartlett, or your cousin, Wheeler, a portion of the land you purchased at that tax-sale to
409 F. H. Whitney after procuring a tax-deed under said sale, and

does not your sister or cousin now claim the lands under a subsequent sale; and is there not now pending a suit involving the validity of the title under the sale of Jan., 1864?

(Objected.)

Ans. Mrs. Bartlett and Wheeler both sold to Whitney lands procured by them under a tax-title in Cass County, and I think part was first bought at the Jan. sale, 1864, but I am not positive. The present suit, as I understand it, does not involve the validity of the tax-sale of Jan., 1864.

Int. 14. Does not Whitney claim title to the land in controversy in the suit you refer to under the tax-sale of 1864?

Ans. I think not, but am not positive but some of the peices may have been sold for that year.

Int. 15. Does not Mrs. Bartlett claim title to the land in con-
410 troversy in said suit referred to under a subsequent tax-sale?

(Objected to.)

Ans. She does.

Int. 16. Then the only question between the parties, so far as the land in controversy between them is claimed by Whitney under the sale of 1864, is as to the superiority of their respective tax-titles, is it not?

Ans. I do not so understand it, and never understood that the tax-sale of Jan., 1864, had anything to do with the present suit between Bartlett and Whitney.

Direct examination resumed:

Int. 17. State, if you know, whether or not the treasurer, Dickerson, at the tax-sale of Jan., 1864, did or did not act as agent for parties in selecting and having certified to them lands at that sale.

411 Ans. I don't know well enough to testify on that point.

In your answer to sixth question in your last cross-examination, you say there was no offer of lands or any regular sale, but any party coming in had what they wanted. Now, was there any adjournment of the tax-sale from day to day after the 4th day of Jan., 1864, by public announcement or otherwise, so far as you know or ever heard, made?

(First clause of quest. objected to, because it is not true; and, 2d, because it is immaterial.)

Ans. I don't remember that there was. If there was, I cannot now remember it.

Int. 18. Where do you reside, and at what distance?

Ans. I reside in Creston, Union County, Iowa. By the usual traveled route, being via Council Bluffs, it is two hundred and fifty miles from here.

412 E. W. DAVENPORT.

Subscribed and sworn to by E. W. Davenport before me this 18th day of April, 1874.

D. F. CALLENDER,
Notary Public, Polk Co., Iowa.

STATE OF IOWA,
Polk County, ss:

I, D. F. Callender, a notary public within and for Polk County, Iowa, do hereby certify that in pursuance of the agreement hereto offered, I caused to come before me at the office of Phillips and Phillips, in the city of Des Moines, Polk County, Iowa, on the 18th day of April, 1874, E. W. Davenport, who was then and there by me duly sworn and exam-

ined, and his examination by me reduced to writing, and after being read over to said witness the same was subscribed and sworn to by him in my presence, and his said deposition is herewith returned. I further
413 certify that Phillips & Phillips were present and conducted the said examination on the part of the plaintiff, and that J. R. Barcroft was present and conducted the examination on the part of the defendant.

Given under my hand and seal official hereto attached at De Moines, Iowa, on the 21st day of April, 1874.

D. F. CALLENDER,
Notary Public, Polk Co., Ia.

(Endorsed:) Filed May 4, '74. George B. Corkhill, clerk.

414 And upon the trial of said cause, the respondent, to sustain the issues on his part, introduced and read in evidence certain documents and depositions, of which the following are true copies:

415 *Dedimus protestatem.*

CIRCUIT COURT OF THE UNITED STATES,
District of Iowa, ss:

To M. P. Holmes, greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested, with full power and authority to examine any and all witnesses who may be brought before you on their corporal oath as witnesses in a cause depending in the circuit court of the United States for the district of Iowa, wherein M. Hurley is plaintiff, and James Callanan et. ux are defendants, on the part of the defendants, upon oral interrogatories; and, therefore, you are hereby commanded that at certain days and places, to be appointed by you for that purpose, you do cause the said witnesses to come before you, and then and there examine them on oath on oral interrogatories.

That such interrogatories and cross-interrogatories as shall be propounded to said witnesse' you shall cause to be written out, and the answers thereto to be inserted immediately following the respective interrogatories. That you cause the whole to be read over to the witnesses and the same to be subscribed by them, and duly sworn to before you. That you take said deposition, in accordance with your certificate which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein-mentioned. That you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court at Des Moines, Iowa. That you endorse on the outside of said envelope, thus directed, the title of the cause in which the deposition is to be used; and that you execute this commission with all convenient speed.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, this 2nd day of May, 1873, and in the 97th year of the Independence of the United States of America.

Attest:

GEORGE B. CORKHILL,
Clerk of United States Circuit Court, District of Iowa.

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded (whether written or oral) to be written out

and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole, being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the deposition and returned with them, unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

416 Depositions of witnesses produced, sworn, and examined at the court-house in Des Moines, Polk Co., Iowa, before me, C. P. Holmes, a notary public in & for said county & State, in pursuance to the annexed commission, to me directed, in an action now pending in the circuit court of the United States for the district of Iowa, wherein M. Hurley is plaintiff and James Callanan et ux are defendants on the part of the defendants, this 2nd day of May, 1873.

JOHN WARFORD, being produced, sworn, & examined on the part of the defendant, deposed as follows:

Int. 1. What is your name, age, occupation, & place of residence?

Answer. John Warford; 35 years; occupation, merchant; residence, Minburn, Dallas Co., Iowa.

Int. 2. Are you acquainted with the parties to this suit; if so, how long have you known them?

417 Ans. Am acquainted with James Callanan, jr., personally, & with Dexter Reynolds by correspondence; have known Callanan 7 or 8 years; do not know the other parties by correspondence or otherwise.

Int. 3. State whether or not you bought any land at a tax-sale in Cass County, Iowa, in Jany., 1864; and, if so, for whom did you purchase it, and by what authority?

Ans. I did, for Dexter Reynolds & O. Meads, by direction of Dexter Reynolds.

Int. 4. State if you ever had any directions to purchase any land in the name of O. Meads, except by direction of said Reynolds.

Ans. I never did.

Int. 5. Have you any of the correspondece or letters of Reynolds to you, or yours to Reynolds, in relation to buying land for taxes? &, if so, will you please produce them.

418 . I have no letters written by him to me, or letters or copies of letters written to him in relation to the matter.

Int. 6. Where did or does Dexter Reynolds live, so far as you know?

Ans. In Albany, New York.

Int. 7. What has become of the letters or correspondence above referred to, & why you cannot produce them?

Ans. They were destroyed and burned up about 15 months ago.

Int. 8. State what directions you had from Reynolds in relation to buying land at tax-sale in his name and the name of Meads, if any, & who paid for the same.

Answer. He directed me to purchase part in his own name, and part in name of O. Meads. Dexter Reynolds paid for all the purchases, & for my services.

419 Int. 9. State whether or not you had any other directions from

any other person to purchase land at tax-sale in Cass Co., in 1864, except from Reynolds, in his name or name of O. Meads.

Ans. I did not.

Int. 10. State whether or not all the land purchased in Cass Co., at the tax-sale of Jany., 1864, in the name of D. Reynolds & O. Meads, where purchased by you under direction of D. Reynolds, as before stated.

Ans. They were.

Int. 11. State whether or not you know a man by the name of W. B. Bebee, or any other man by the name of Bebee, residing in the State of Ohio.

Ans. No.

Int. 12. Do you know that any land was sold, struck off, or marked off, on the books of the county treasurer of Cass Co. at said tax-sale,
420 to or in the name of a Mr. Bebee.

Ans. I do not.

Int. 13. Did you know of any land being sold or entered as being sold on the books of said treasurer to any man by the name of Bebee at said Jany. sale, 1864, by the treasurer or any one else?

Ans. I never knew of any man by the name of Bebee, or that he ever bought any land at said sale, or that any was entered on the books in this name in said treasurer's office; in fact, knew nothing of it in any manner or shape.

Int. 14. State if you had any directions from Reynolds in regard to what kind of lands you were to purchase for him in his name and that of O. Meads, at said sale in Cass Co.

Answer. I was directed to purchase land that delinquent not more than three years.

421 Int. 15. State what instructions you had, if any, in regard to being careful and correct in said purchases, and in doing all the business according to law.

Ans. The instructions from Reynolds were always to be careful to see that no mistakes occurred, and that the purchases were made correctly.

Int. 16. State the reason, if any, that Reynolds gave, or why he did not want you to purchase land on which taxes were delinquent for more than three years.

Ans. He wanted to purchase such lands only as were likely to be redeemed, and if the taxes had been pretty well paid up, he thought such lands more likely to be redeemed than those on which the taxes were due for a longer time.

Int. 17. State whether his object was to purchase land at tax-sale for the purpose of obtaining the land or for the sake of having the
422 land redeemed, getting his money back with penalty and interest.

(Objected to by the plaintiff, because: 1st, leading; 2nd, immaterial; 3rd, calls for a conclusion of the witness from the correspondence, & not for what was said therein.)

Ans. I do not remember that he so stated in the correspondence, but I understood that he wanted the penalty & interest, and not the land.

(Answer objected to for the same reason.)

Int. 18. State whether or not that was not the substance of his directions to you.

(Same objection as to last question.)

Ans. I think it was.

Int. 19. State whether or not in your purchases of land at said tax-sale you purchased land on which taxes were only delinquent not exceeding three years, and refused to purchase lands that were de-
423 linquent for more than three years for the reasons above stated.

(Objected to as leading, immaterial, and not competent evidence in this case.)

Answer. I intended to purchase only such land as was delinquent for three years and less, and refused to purchase such land as was delinquent for more than three years, as directed by Reynolds.

Int. 20. State whether or not you attended said tax-sale of January, 1864, of Cass Co., Iowa, in person, and bought the land in name of D. Reynolds & O. Meads, at said sale yourself.

Ans. I did.

Int. 21. State who made said sale and whether it was made publicly or privately, or how was it made.

Ans. Isaac Dickerson, the then treasurer of said county, made
424 the sale. The sale was made publicly by the calling the lots or lands as advertised; & when so called they were bid in as called.

On cross-examination the witness testified as follows:

Int. 1. When did Dexter Reynolds direct you to buy any lands at tax-sale in Cass Co., Iowa?

Ans. During the latter part of 1863, and in Sept., Oct., or November of that year.

Int. 2. What directions, if any, did he give you as to what tracts or parcells you should buy, for what years' taxes, & for whom?

Ans. He gave me no instructions as to the particular tracts to be purchased, but directed me to purchase only such as were delinquent. One, two, & three lots, & for himself and O. Meads.

425 Int. 3. What, if any, directions did you have as to the amount of money to be used in such purchases?

Ans. I was not limited to any particular amount, but if desirable tracts could be found was to invest six or seven thousand dollars.

Int. 4. What circumstances were to determine the desirability of the tracts you were to purchase?

Ans. If they were not delinquent for more than three years, and not in smaller tracts than forty-acre pieces; he did not desire fractional pieces.

Int. 5. How were you to be placed in necessary funds to make the purchases?

Ans. I think I took in the neighborhood three thousand dollars of money, received from Reynolds by express, with me when I went to Cass Co. to attend the tax-sale, and the balance I paid to E. W.
426 Davenport, at the request of the treasurer. The last money I paid at Adel. I was doing business for Reynolds in other counties, and did draw on him whenever I wanted money to invest in that way; these drafts were cashed at Allen's bank in Des Moines. The money I paid at Adel was paid on the delivery of the certificates of purchase. I also received money afterwards, through orders drawn by Reynolds, of the clerks of various counties, against monies received by them from redemptions.

Int. 6. Had Reynolds directed you when you were to purchase in Cass Co., and when you were to go there yourself, if at all?

Ans. My recollection is that I had agreed, before the sale, to invest monies for him, and that he directed me to purchase at this sale, & don't remember that he gave me directions about going to this
427 sale. I had agreed to go, and went as per agreement.

Int. 7. Where were you living in the fall of 1863?

Ans. In the town of Adel, Dallas Co., Iowa.

Int. 8. What led to your correspondence with Dexter Reynolds in re-

gard to your purchases in Cass Co., & when did you first correspond with him?

Ans. I cannot now state.

Int. 9. Had you known of Dexter Reynolds before the fall of '63, and had you, prior to that time, ever met or corresponded with him?

Ans. It is my impression that I commenced corresponding with him nine months to a year before the sale of Jany., 1864—never met him.

Int. 10. Where was the Cass Co. tax sale of January, 1864, held, and did you attend it personally?

428 Ans. It was held in the court-house in the town of Lewis, Cass Co., Iowa. I did attend said sale, personally.

Int. 11. Who selected the tracts or parcels that you bought at said sale under Reynolds' directions?

Ans. I did.

Int. 12. State as near as you can when you reached Lewis, and how long you remained there, at the time you went there to attend the sale.

Ans. It is my recollection that I reached Lewis in the latter part of the night, in the fore part of the month of Jan'y, remained until the afternoon or evening of the 2nd day after my arrival.

Int. 13. What amount did you invest at that sale, under Reynolds' directions?

Ans. I think it was in the neighborhood of seven thousand
429 dollars.

Int. 14. How many tracts or parcels, & how many acres in all did you then purchase?

Ans. I cannot state. I kept no memoranda of the number of tracts or acres. I received the certificates and sent them to Mr. Reynolds without keeping any account of them. I think it was five to six weeks after the sale before I received the certificates.

Int. 15. Where the lands you then purchased bid in by you, and in whose name?

Ans. They were in the names of Dexter Reynolds & O. Meads, & the certificates of purchase were made to them.

Int. 16. Where and in what fire were those letters destroyed?

Ans. They were destroyed in Grand Junction, when I removed
430 from that town, the first of March, 1872. I destroyed all the old letters I had on hand at that time.

Int. 17. Did you see the Dexter Reynolds letters to you, spoken of at that time?

Ans. I cannot say that I did see the letters spoken of; the letters had been filed with other letters, and the entire lot was burned up.

Int. 18. Have you ever made search for these letters since that time; if so, when and where?

Ans. I have not; when I removed from Adel, in 1868, to Perry, all of my letters were put in a box & taken with other household goods, & from Perry to Grand Junction, and become so annoying, being thrown around, I concluded to destroy them.

The further of these depositions adjourned until Friday morning, May 9th, 1873, to be continued at the office of Barcroft, Given & Hammond.

431 In pursuance to the adjourned as above stated, on this 9th day of May, 1873, at 9 o'clock a. m., I continued the taking of said depositions as follows:

Int. 19. Have you ever given in any other deposition or affidavit copies of these letters from Dexter Reynolds to yourself?

Ans. I have not.

Int. 20. Did you ever give your deposition at Davenport, Iowa, at the law office of Brown, Campbell & Sulley, or Brown & Sulleys, or Brown & Campbell, in regard to this correspondence, or in regard to the purchase of these lands in Cass Co. for said Reynolds & said Meads at said tax-sale?

Ans. I did give depositions at the office of Brown, Campbell & Sulley in Davenport, in October, 1871. I do not now remember that any
432 questions were asked me in regard to the correspondence between Dexter Reynolds and myself in regard to the purchase of lands at tax-sales in Cass Co. These depositions were taken in regard to the purchase of lands at tax-sale in Cass Co.

Int. 21. Did you ever give but one deposition in Davenport in regard to the purchase of these lands at tax-sale, and in what cases?

Ans. I do not remember of giving but one deposition, and do not remember the tittle of the case.

Int. 22. At the time of giving such deposition was or not the circumstances attending your purchase of said lands at said tax-sale fresher in your recollection than they now are?

Ans. They possibly may have been.

Int. 23. Were the facts as stated in such deposition in Davenport stated correctly, as you then recollected them?

433 Ans. They certainly were.

(The question and answer objected to, because irrelevant & incompetent and immaterial.)

Int. 24. How long have you been acquainted with the defendant Callanan?

Ans. Some 7 or 8 years.

Int. 25. Had you done any business for said Callanan in the purchase of lands at tax-sales before the purchase of the lands in controversy in the name of Reynolds & Meads?

(Same objection as to No. 23.)

Ans. I could not say positively, but I think not.

Int. 26. Did you, about that time, purchase any lands at tax-sales for said Callanan?

(Same objection as to No. 23.)

Ans. No; I have now recollection of ever purchasing land at tax-sale for Mr. Callanan.

434 Int. 27. Had you, prior to the purchase of these lands, been acting as agent for Mr. Callanan, in the payment of taxes or in the transaction of any other business relating to his tax-titles?

(Same objection as to No. 23.)

Ans. I do not now remember, but think I had paid some taxes for him prior to the purchase of these lands for Reynolds & Meads.

Int. 28. For how many years prior to the purchase of these lands had you been acting as agent for Mr. Callanan?

(Objected to as not cross-examination, irrelevant & immaterial.)

Ans. I cannot state. I gave it as my recollection that I had paid some taxes for him, but do not now know when or how long before this tax-sale took place.

Int. 29. Did you have any correspondence with the defendant
435 Callanan prior to the purchase of the lands in regard to Dexter Reynolds, O. Meads, or this tax-sale?

(Same objection.)

Ans. No; not to the best of my recollection.

Int. 30. Did you have any conversation with the deft. Callanan in

regard to the subject of the last question before the purchase of these lands in the name of Reynolds & Meads?

(Same objection.)

Ans. I think not.

Int. 31. Had you ever transacted any business for Reynolds & Meads before the purchase of these lands in Cass Co.?

Ans. I think I had for Reynolds, but not for Meads.

Int. 32. Did you ever have any conversation with Meads, either oral or written, and do you know the man?

Ans. No; I do not know the man.

436 Int. 33. Did you have any correspondence with Reynolds, personally, before you bought the lands, or do you know him personally?

Ans. No; I never saw the man; I have had written correspondence with him only.

Int. 34. In your correspondence, or his correspondence with you, prior to the purchase of these lands, was any reference made therein to the defendants Callanan or O. Meads?

Ans. I do not remember that there was as to Mr. Callanan, by either of us. I was directed by Reynolds to purchase a part of the lands in the name of O. Meads.

Int. 35. Did the name of the deft. Callanan appear in any part of the correspondence between yourself & Reynolds prior to the purchase of these lands?

Ans. I do not remember.

Int. 36. When did you first learn that the validity of this tax-

437 sale and purchase by you of lands in Cass Co. was called in question in any of the courts of the country?

Ans. I do not remember the time, but think it was in 1869.

Int. 37. How many depositions have you given, since that time, in regard to this purchase made by you for Reynolds & Meads—in what cases, in what courts, & when?

Ans. I believe the present deposition is the fourth. One case was Thos. Meredith against Callanan & others. I think it was in district court of Cass Co.; about two years last winter, I think. One deposition was taken in Davenport in October, 1871; do not remember the parties, except that Callanan & others were the defendants in circuit court of Cass Co., Iowa. I think there may have been no other deposition taken. I was examined as a witness in circuit court of Cass Co. Do not know

438 the plaintiff, but Callanan & others were defendants, in the month of February, 1872.

Int. 38. When did you remove from Grand Junction to where you now live?

Ans. 13th March, 1872.

Int. 39. How long after that before you destroyed this correspondence?

Ans. The correspondence was destroyed two or three days before I removed to where I now reside.

Int. 40. Did you destroy, at the same time, your letter-press copies of your correspondence with Reynolds had before this tax-sale in Cass Co.?

Ans. It is my recollection that I did. Since the commencement of the taking of this deposition I have searched for this correspondence, & could not find it, which satisfies me that it was destroyed when the letters were destroyed.

439 Int. 41. Did you destroy the entire letter-press book containing this correspondence, or only the copies of the letters to Reynolds?

Ans. The book was destroyed; at least, I cannot now find it; I have not seen it since that date.

Int. 42. Do you now know that the letters from Reynolds to you were destroyed when you removed from Grand Junction to where you now live, & how do you know it & who destroyed them?

Ans. I cannot state that all the letters were then destroyed, but all that I had at that time were then destroyed; I destroyed them myself. I do not want to swear that I burned every letter at that time; these letters were filed with other letters and burned with them; if any were preserved, I have no knowledge of it. I have searched for these
440 letters since these depositions were commenced, but cannot find them. At the time I destroyed the letters referred to, I must have burned one thousand or thereabouts.

Int. 43. Where did you reside and where was your place of business at the time of the purchase of these lands for Reynolds & Meads, & what was your employment?

Ans. I resided at the town of Adel, Dallas Co., Iowa, and that was my place of business. I was in the real-estate business, & think I was deputy clerk of the district court of Dallas Co.

Int. 44. Who went with you from Adel to Cass Co. at the time you made this purchase?

Ans. I think a man by the name of Cornish, and a passenger on the stage-coach; there may have been others, but do not remember.

441 Int. 45. What time of the day did you arrive at the treasurer's office in Cass Co., and what day, on this mission?

Ans. I reached the treasurer's office between 10 & 11 o'clock in the forenoon. I cannot give the day.

Int. 46. Did you leave for home the same day, & what time in the day?

Ans. I left for home the day after I arrived; cannot give the hour but think it was the afternoon or evening of the second day after I arrived.

Int. 47. Did you go to the treasurer's office the same day you arrived?

Ans. It is my recollection that I did.

Int. 48. Did you not arrive in the evening and have a conference with the treasurer of Cass Co. before you went to his office, as stated by you?

442 Ans. It possibly may have been so, but I do not recollect it; I think I reached Lewis in the latter part of the night.

Int. 49. Did you see the treasurer and converse with him before the opening of the sale, on the day after you arrived at Lewis?

Ans. I do not remember.

Int. 50. Did you have any conversation with any one in charge of that office before the opening of the sale on that day?

Ans. It is my recollection that I had a conversation with the treasurer in the morning of the day I arrived at Lewis, and before the sale.

Int. 51. Had you prior to that time made any selections of lands which you desired to purchase for Reynolds & Meads at said sale?

Ans. I think not.

443 Int. 52. Had any person furnished you a list of such lands; if so, who?

Ans. No.

Int. 53. When did the tax-sales open the first day you were there? How were they opened, & when?

Ans. I do not know. When I arrived at the treasurer's office he informed me the sale was open.

Int. 54. Who helped you to prepare the list of lands for Reynolds & Meads now in controversy before you bought them?

Ans. I have no recollection of having any list whatever excepting the advertised list.

No. 55. Did you buy any lands on the first day you arrived at Lewis?

Ans. It is my best recollection that I did.

Int. 56. Did you buy any on the 2nd day?

444 Ans. It is my best recollection that I did.

Int. 57. Did you and the treasurer mark any lands or description of land on any book or paper indicating what lands you desired to purchase for Reynolds & Meads?

Ans. No; none whatever.

Int. 58. Who was present on the first day of the sale, when you were there?

Ans. I cannot now state.

Int. 59. Were there any persons present when you bought these lands?

Ans. I think there were some persons present, but do not remember positively.

Int. 60. Was the treasurer present? Give his name.

Ans. He was present. His name was Isaac Dickerson.

445 Int. 61. Were there any other person or persons present when you purchased the lands in controversy? If so, give their names.

Ans. I think there were others present, but cannot recollect their names.

Int. 62. Was the clerk of the court present? If so, give his name.

Ans. I think the clerk was present a part of the time. Do not remember his name, but think it was Waddell.

No. 63. What part of the time would you say he was there?

Ans. I cannot say as to that; he may have been there one-half of the time, more or less.

Int. 64. When the clerk was not there was there anybody else present but yourself and the treasurer who were in any way participating in said sales? And give their names & what they were doing.

446 Ans. I do not remember of others being present who participated in the sale.

Int. 65. When the clerk was present, if at all, was there anybody else who participated in the sale except yourself, treasurer, & the clerk present? &, if so, give their names, & what part they took in the sales.

Ans. I have no recollection of there being others present who participated in the sale.

Int. 66. How long were you engaged on the first day in making purchases for Reynolds & Meads?

Ans. I think about four to six hours.

Int. 67. And how long on the 2nd day?

Ans. About the same length of time as the first, I think.

Int. 68. Was this business transacted in the treasurer's office, all of it?

447 Ans. It was, except re'iving the certificates, as heretofore stated in this deposition.

Int. 69. Give the size of that office.

Ans. I think it was about 18 by 20 or 22 feet.

Int. 70. Was it divided in any way by counters or partitions, in whole or in part?

Ans. I do not remember. I think it was not divided, but think there was a table in the center of the room.

Int. 71. During the time you were purchasing, what place or position did the treasurer occupy in this room?

Ans. I think he occupied a chair near the table the greater portion of the time, sitting down.

Int. 72. Were you sitting in close proximity to him?

Ans. I do not remember as to that; I occupied a chair by the table, but how near him I could not state.

448 Int. 73. Was you sitting on the same side of the table and where you could see the entries made on the books?

Ans. I do not remember as to that.

Int. 74. Did you not see or aim to see at that time every entry or mark that was made by the treasurer on the sale-book relating to your purchase then being made?

(Objected to as assuming a fact not proved, to wit, that the entry was then made in the sale-book by the treasurer.)

Ans. I have no recollection of seeing any entry or mark on the sale-book. I think the lands were sold from the advertised list and were checked thereon by the treasurer.

Int. 75. There was no record kept, then, or entry made at the time of the sale, that you seen, was there?

Ans. There was not that I now remember.

449 Int. 76. Did you keep a record of what you bought?

Ans. Nothing except the advertised list, and when I bought a piece of land I made a mark or check opposite the piece or tract.

Int. 77. And the treasurer kept his record in the same way, did he?

Ans. I cannot state positively, but think it was in a similar manner.

Int. 78. Did you & the treasurer at any time prior to your taking your seats at this table select the lands which you desired to buy?

Ans. No.

Int. 79. While you & he were sitting at this table, and you were engaged in making the purchases for Reynolds & Meads, did you tell the treasurer that you wanted to buy only such lands as were not delinquent for more than three years?

450 Ans. I cannot now state.

Int. 80. Did you tell him who you were buying for?

Ans. I told him who I was buying the lands for, but do not know when or at what time.

Int. 81. How often was you at his office during this purchase & before you got the certificate? In other *records*, was you back again at the treasurer's office in Cass Co. after you left on the second day, as heretofore stated by you, before you got the certificates?

Ans. I was not.

Int. 82. Then you made all these purchases in the two days mentioned, did you?

Ans. I did.

Int. 83. Did you not after you left there write back to the treasurer instructing him to make changes in your purchase, either dropping

451 out a part of what you had checked or adding new selections?

Ans. Not that I have any recollection of.

Int. 84. Do you now say that you did not?

Ans. I could not state that I did not write him to that effect, but if I did I have no recollection of it.

Int. 85. Do you think it possible that you could forget the sending of such letters, if you sent them?

Ans. I do think it possible.

Int. 86. Do you now say that you think you did not send such letters?

Ans. I may have sent such letter', but I have no recollection of it whatever.

Int. 87. Did you foot up your list before you left Lewis, at the time of the purchase, to see how much land you had purchased, & the
452 amount of tax-investment you had made?

Ans. I did not.

Int. 88. How did you get at the amount of money you invested, so as to know when to stop making purchases, if you did not make some footings or take memoranda?

Ans. It is my recollection that when I thought the purchase would amount to six or 7 thousand dollars, I stop'ed buying & knew nothing more about it until the certificates were made out.

Int. 89. Was the treasurer with you all the time you were making these purchases?

Ans. My recollection is that he was.

Int. 90. Did he not leave the office on one or more occasions while you hunted up & marked or checked the lands you wanted?

453 Ans. Possibly may have done so, but do not remember that such was the case.

Int. 91. When you commenced buying on the morning of the first day you continued to buy without any interruption until noon, did you?

Ans. I could not state as to that.

Int. 92. What is your best recollection?

Ans. My best recollection is, that the sale continued without much interruption from the time we commenced until noon.

Int. 93. After you sat down with the treasurer at the table on the morning of the first day's visit to his office, and until you adjourned for noon, was there any land sold to anybody but yourself? If so, to whom?

Ans. I think there was not.

454 Int. 94. Was there any bidding against you on the land you got during that time; &, if so, who bid?

Ans. There was not.

Int. 95. After you took your seat with the treasurer, after dinner, at the table in the office, until you closed your purchases for that day, was there any one else who bought any land for taxes; &, if so, who?

Ans. Not that I remember of.

Int. 96. Was there any bidding against you on your purchases?

Ans. There was not.

Int. 97. After you took your seat with the treasurer in his office on the morning of the second day until you adjourned your *adjourned your* purchases for that forenoon, was there any purchase made by any
455 one of lands for taxes or any bidding done against you in your purchases?

Ans. Not that I now remember of, and there was no bidding against me at any time nor lands sold to any other person during the time I was there that I remember of.

Int. 98. Did you tell the treasurer at any time during your purchases that you was buying for Reynolds & Meads, and before you closed your purchases on the 2nd day?

Ans. It is impossible for me to state when I told him I wanted to purchase in the name of Reynolds & Meads.

Int. 99. You bought in how many townships in Cass Co. at that purchase?

Ans. I do not know; I kept no memoranda of the certificates, & could not state whether it was one or a half dozen.

456 Int. 100. Give the number of acres you purchased at that time & the amount of money expended in such purchase.

Ans. I never knew the number of acres; think the investment amounted to near seven thousand dollars.

Int. 101. How much would it average per acre, I mean; how much tax on each acre would it average at your purchase?

Ans. I cannot state, but think it would average about thirty to forty cents per acre, probably more, making in the neighborhood of twenty thousand acres.

Int. 102. In your purchases did you take the lands as they came on the published list, or did you select from the list such as had not more that three taxes due on them?

Ans. In calling off the lands I think the treasurer omitted such as were delinquent for over three years, and called only such as were delinquent three years & less, & such I bid in.

457 Int. 103. Then you had told the treasurer that you only wanted such lands as were delinquent three years or less, had you?

Ans. I undoubtedly had.

Int. 104. You purchased for Reynolds in one part of a township & for Meads in another part, did you?

Ans. I do not remember how the purchases were seperated.

Int. 105. Is it not true that you commenced in your purchases at the northeast corner of a given township for one party, & on the south line of the township for the other, and had the certificates issued in the same way?

(Objected as incompetent & immaterial.)

Ans. Such may be the facts, but I have no recollection in what part of the township the purchases commenced, either for Reynolds or for Meads.

458 Int. 106. Did the treasurer follow your directions as to what portion should be certified to Meads & what part to Reynolds as being purchased severally?

(Objected to as assuming a fact not proved, to wit, that witness had given directions as to whom certificates of sale should be made, and that the certificates were not issued to the respective purchasers as the same were sold.)

Ans. I could not state, but believe he did.

Int. 107. If, as you say, the treasurer or clerk kept no record of the lands you purchased, except to mark or check the description on the published list, when & how did you communicate to him as to what pieces or parcels of lands were to be certified to Meads & Reynolds severally?

Ans. I do not remember.

459 Int. 108. You have said that in calling off the lands you think the treasurer omitted such as was delinquent for more than three years, &c. Now, what do you mean by calling off, and was there any other calling off than you & he looking over the list and picking out such pieces as were not delinquent for more than three years?

Ans. I mean to say that the numbers of such tracts were read off by the treasurer, and when so read, I said I would take the piece as called. I could not say that all the lands embraced in the certificates to Reynolds & Meads were so called, as the memoranda I kept at the time was left with the treasurer.

Int. 109. This calling off, then, was in a conversational manner between you and the treasurer, to know if you would take such pieces as were called, was it? If not, then tell us what it was.

460 Ans. It was in a conversational manner. I do not remember if he asked me if I would take such & such pieces, but he read from his list only such as were delinquent one, two, or three years. This is my recollection of the manner of calling them off.

Int. 110. This calling off was to you alone; its purpose was to know if you wanted the particular piece called, was it not?

Ans. I do not know that he called them alone to find out whether I would take them. I do not think he called many pieces that I did not take, & that I did not intentionally buy any where the taxes were due more than three years.

Int. 111. Did you get any certificates while you were there, or were they afterwards all forwarded to you? If so, where to and when?

461 Ans. I did not; they were delivered to me by E. W. Davenport, in Adel, Iowa, about 5 to 6 weeks after the purchase.

Int. 112. Did Davenport come to Adel on purpose to bring and deliver those certificates?

Ans. I think not; I think he was on his way to Des Moines to make payment to the State treasurer for the treasurer of Cass Co.

Int. 113. How did you pay him; by cash or by draft?

Ans. I do not now remember.

Int. 114. Did you not pay it by drafts drawn on the defendant, Callanan, or on B. F. Allen's bank?

Ans. I did not pay by draft on deft. Callanan, but may have paid it by check on Allen's bank.

Int. 115. Are you still acting as the agt. of deft. Reynolds in

462 paying his taxes & looking after his lands? If not, when did your agency cease?

Ans. I am not now acting as the agent of Mr. Reynolds, in a manner, for his lands or otherwise, nor have I been since the forepart of the year 1868.

Int. 116. Have you been transacting any business for deft. Callanan in paying taxes, looking after his lands, or buying tax-titles since you bought the lands in controversy for defts. Reynolds & Meads; and if so, how soon after that time did you first commence doing business for him?

Ans. The only business I remember of transacting for Mr. Callanan was in the year 1866, I think, at which time I paid taxes on some Dallas Co. lands. Have transacted no business for him in that direction since that time, to the best of my recollection.

463 Int. 117. When was it you purchased these for Reynolds & Meads? Give the year, month, & day of the month.

Ans. My best recollection is that it was in the year 1864, in the forepart of Jany., of that year; the day I cannot give.

Int. 118. Did you ever purchase any lands in Cass Co., at any real or pretended tax-sale, for Reynolds & Meads, except at the one time of which you have been testifying?

Ans. I did not.

JOHN WARFORD.

Sworn to before me and subscribed in my presence by the said John Warford this 9th day of May, 1873, at the law-office of Barcroft, Given & Hammond, Des Moines, Iowa.

C. P. HOLMES,
Notary Public & Commissioner.

464 STATE OF IOWA,
Polk County, ss:

I, C. P. Holmes, do hereby certify that, in pursuance of the annexed commission to me directed, I caused to come before me, at the places herein stated and on the days herein named, John Warford, who was then & there by me sworn and examined, & his examination was by me reduced to writing, and, after being by me read over to him, the said witness, subscribed & sworn to by him in my presence, and the depositions are now herewith returned; & I further certify that James Callanan, jr., & J. B. Barcroft, esq., were present and conducted said examination on the part of said defendants, & that Wm. Phillips & Lewis Ruttaka, esqs., were present and cross-examined said witness on the part of the plaintiff.

Given under my hand and official seal hereto annexed at Des Moines, Polk Co., Iowa, this 9th day of May, 1873.

C. P. HOLMES,
Notary Public & Commissioner.

465 Commissioner's fees, $15.30, paid by deft. Callanan.

Witness' fees, 3 days, @ $1.50	4 50
Milage, 56 miles, @ 5c	2 80
	$7 30

Paid by deft. Callanan.

(Endorsed:) Filed May 28, 1873. George B. Corkhill, clerk.

466 *Dedimus protestatem.*

CIRCUIT COURT OF THE UNITED STATES,
District of Iowa, ss:

To N. C. McHARG of Albany, New York, greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested, with full power and authority to examine Dexter Reynolds on his corporal oath as a witness in a cause depending in the circuit court of the United States for district of Iowa, wherein Michael Hurley is plaintiff and James Callaman, jr., et an defendants, on the part of the defendant, upon the interrogatories annexed to this commission. And, therefore, you are hereby commanded that at certain days and places, to be appointed by you for that purpose, you do cause the said Dexter Reynolds to come before you, and then and there examine him on oath upon the said interrogatories.

That you propound to the said witness the interrogatories and cross-interrogatories hereto annexed, and cause the same to be written out, and the answers thereto to be inserted immediately following the respective interrogatories; that you cause the whole to be read over to the witness, and the same to be subscribed by him, and duly sworn to before you; that you take said deposition, in accordance with your certificate, which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned; that you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court at Des Moines, Iowa; that you endorse on the outside of said envelope, thus directed, the title of the cause in which the deposition is to be used; and that you execute this commission with all convenient speed.

Witness the honorable Nathan Clifford, sen. associate justice of the Supreme Court of the United States, this 22nd day of August, 1873, and in the 98th year of the Independence of the United States of America.

Attest: GEORGE B. CORKHILL,
Clerk of United States Circuit Court, District of Iowa.

Commissioner's fees, $15.00, paid by deft. Callanan.

W. C. McHARG, *Comiss.*

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded (whether written or oral) to be written out, and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole, being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the deposition and returned with them, unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

467 *Notice of sueing out commission to take depositions.*

MICHAEL HURLEY, PLAINTIFF,
against
JAMES CALLANAN, JR., ET , DEFENDANT.

To the plaintiff:

You are hereby notified that the said James Callanan, jr., defendant, will, on the 22nd day of August, A. D. 1873, sue out of the office of the clerk of the circuit court of the United States in and for district of Iowa a commission on the above-entitled action, directed to W. C. McHarg, of Albany, New York, directing him to take the deposition of Dexter Reynolds upon the several interrogatories appended hereto. The same, when so taken, to be read upon the trial of the above-entitled cause on the part of the said defendant.

Aug. 7th, A. D. 1873.

BARCROFT, GIVEN & HAMMOND,
Attorneys for Defendant.

468 We acknowledge service of the within notice and attached interrogatories by copy thereof delivered to us at Des Moines, Polk County, Iowa, and consent that depositions may be taken under a commissioner, to be issued pursuant to said notice, instead of by oral examination of the witnesses, waiving the rule of practice in relation to the taking of testimony where notice has been served that the party desires to the testimony to be taken on oral examination, provided complt. shall have the right to put such interrogatories as he may desire pertinent to the case at large under and as cross-interrogatories.

AUG. 7, '73.

PHILLIPS & PHILLIPS,
For Complt.

469 In the circuit court of the United States for the district of Iowa.

MICHAEL HURLEY, PLFF.,
vs.
JAMES CALLANAN, JR., ET AL., DEFTS.

Interrogatories to be propounded to D. Reynolds under commission to be issued pursuant to the notice hereto attached.

Inter. No. 1. What is your name, age, and place of residence?

Inter. No. 2. Do you know the parties to this suit; and, if so, how long have you known them?

Inter. No. 3. State if you purchased any land at tax-sale of the treasurer of Cass County, in the State of Iowa, in 1864; and, if so, at what time of the year?

470 Inter. No. 4. Were said purchases made by you in person or by an agent; and, if so, by whom?

Inter. No. 5. State if you know whether any other person or persons purchased land at said tax-sale.

Inter. No. 6. State whether or not one John Warford purchased any land for himself or for any one else at said sale, or whether he was agent for any one else.

Inter. No. 7. State for whom and in whose name were the purchases made in Cass Co., Io.

Inter. No. 8. Do you know whether O. Meads ever purchased any land at tax-sale in Cass Co., Iowa, through John Warford or otherwise; and, if so, when?

Inter. No. 9. State, if you know, how much land was purchased by O. Meads, or in his name, at said sale in Cass County, and by whom made, and why.

Inter. No. 10. What arrangement was made by you and O. Meads, if any, about purchasing land for taxes in Cass Co. in 1864?

Inter. No. 11. State what was your object in so purchasing land for taxes. State fully how you came to purchase any land in Cass Co. for taxes, and about how much did you so purchase.

471 No. 12. State if you bought all land just as it came; and, if not, what kind did you purchase, and why?

No. 13. State, if you know, the value of the land so purchased at tax-sale at the time of said purchase.

No. 14. State, if you know, about how much land was advertised for sale for taxes in Iowa at that time, and your means of knowing.

No. 15. State whether you know or had ever heard of a man by the name of W. B. Beebe, of Ohio, buying in lands at said tax-sale or any other sale, or having any land entered on sale-books in his name as being bought by the treasurer or any one.

No. 16. State whether or not John Warford was employed to bid in land in your name, and also in the name of O. Meads, for the purpose of preventing competition at the tax-sale; and if he was or was not, state the reasons why, if you know of any.

No. 17. State if there was any agreement or combination among the bidders at said sale not to bid against each other; and if there was or was not, state why, if you know.

472 (Complainant objects to all the above and foregoing interrogatories from No. 11 to 17, inclusive, because, 1st, leading; 2nd, incompetent; 3rd, immaterial and not the best evidence.)

M. HURLEY,
Complt.,
Per P.

(Endorsed:) Filed Aug. 22, 1873. George B. Corkhill, clerk.

473 In circuit court United States, district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR., & OTHERS. } In equity.

Cross-interrogatories to be propounded to Dexter Reynolds.

Int. 1. Have you any interest in this? And explain the interest you have in it.

Int. 2. What do you understand is the issue in this cause?

Int. 3. Are you one of the defendants in the above cause?

Int. 4. Have you ever seen any of the pleadings in this cause or copies of the same; if so, when and where, and who sent them to you?

Int. 5. Have you not received before the giving of this deposi-
474 tion copy in substance of the interrogatories now here propounded to you; and, if so, when did you receive them, & how were they sent to you?

Int. 6. Append said interrogatories as sent you to this deposition and mark them as "Exhibit A."

Int. 7. Did you receive any letter or letters from deft. Callanan, or from any other person or persons, in relation to your evidence in this case or the giving or taking of this deposition; if so, from whom and when did you receive such letters, by whom did they purport to be signed? And append the same or copies thereof to this deposition as part of your answer to these questions.

Int. 8. Have you received any other communication or document or paper relating to your evidence or your deposition in the case? If so, append the same and make it part of your answer to this question.

Int. 9. If for any cause said letters or papers sent you relating to this examination of you as a in this case are not appended,
475 then append copies of the same, including all writings or pencil-markings thereon, and let the notary taking this deposition compare such copies with the originals & so certify the truth.

Int. 10. Have you now appended all correspondence or papers received by you relating to this case or to the giving of this your deposition or copies of the same? And, if not, now append the same.

Int. 11. What is and has been heretofore your business, profession, or occupation?

Int. 12. Where is your present business office or house situated, and where are you giving this your deposition?

Int. 13. Who is present during any part of the time you are giving this deposition?

Int. 14. Who are your attorneys in this cause?

Int. 14. Have you any of the letters written by John Warford to you touching the purchase of said lands in controversy at tax-sale?

Int. 15. Do you give any of them to deft. Callanan at any time?

Int. 16. Where are said letters now?

476 17. Have you in your possession or under your control copies of your letters to John Warford, touching said tax-sales or the purchase of the lands in controversy at such tax-sales; and, if not, what did you do with them, and did you ever give or send any part of such correspondence to defendant Callanan, and where are such letters and correspondence now?

PHILLIPS & PHILLIPS,
Attys. for Complt.

(Endorsed:) Filed Aug. 22, 1873. George B. Corkhill, clerk.

477 In the circuit court of the United States for the district of Iowa.

MICHAEL HURLEY, PLFF.,
agst.
JAMES CALLANAN, JR., & OTHERS, DEFTS.

Deposition of DEXTER REYNOLDS, a witness produced in this action on the part of the defendant, and sworn as such witness in said action pursuant to the commission hereto annexed.

To whom it may concern:

Be it known that on this 1st day of October, 1873, before me, William C. McHarg, of the city of Albany, at my office, in said city, came Dexter Reynolds, who, being by me duly sworn, in answer to the inter-
478 rogatories and cross-interrogatories hereinafter set forth & hereto annexed, did depose and say:

Interrogatory No. 1. What is your name, age, & place of residence?

Answer. My name is Dexter Reynolds. My age is forty-four years. My residence, Albany, N. Y.

Interrog. No. 2. Do you know the parties to this suit; and, if so, how long have you known them?

Answer. I do not know the plaintiff; I know the defts., and I have known James Callanan, jr., for some twenty years or over.

Interrog. No. 3. State if you purchased any land at tax-sale of the treasurer of Cass County, in the State of Iowa, in 1864; and, if so, at what time of the year.

Answer. Yes, I did. My books show it was January 4th, 1864, and I believe that is the date.

Interrog. No. 4. Were said purchases made by you in person, or by an agent; and, if so, by whom?

479 Answer. The purchases were made by John Warford as my agent.

Interrog. No. 5. State, if you , whether any other person or persons purchased land at said tax-sale.

Answer. I do not know w'ether they did or not.

Interrog. No. 6. State whether or not one John Warford purchased any land for himself or for any one else at said sale, or w'ether he was agent for any one else.

Answer. He was not agent for any one else except myself, to my knowledge or belief, & did not purchase any land for any else, to my knowledge or belief.

Interrog. No. 7. State for whom and in whose name were the purchases made in Cass Co., Iowa.

Answer. Part of the purchases were made and taken in the name of O. Meads & part in my name, but O. Meads had no interest in said purchases.

480 Interro. No. 8. Do you know whether O. Meads ever purchased any land at tax-sale in Cass Co., Iowa, through John Warford, or otherwise; and, if so, when?

Answer. He never did, to my knowledge or belief.

Interro. No. 9. State, if you know, how much land was purchased by O. Meads, or in his name, at said sale in Cass Co., & by whom made, & why.

Answer. O. Meads did not purchase any land, but I purchased it in his name for my own convenience. I had some money placed in my hands in 1861 belonging to Howard James; in Jan'y, 1864, or shortly

before that, I concluded to use some of said money by investing it in tax-sales in Iowa, & not wishing to mix it up with my own investments I invested such funds in the name of O. Meads, & my own fund in my own name, to keep them seperate, or my own funds in O. Meads' name, and the James' funds in my own name; I do not recollect which.

481 This I had done solely for my own convenience, and by the consent of O. Meads. O. Meads had no connexion with interest in said sales, nor did Howard James know how or where I invested it, or anything about it.

Interro. No. 10. What arrangement was made by you and O. Meads, if any, about purchasing lands for taxes in Cass Co., in 1864?

Answer. None. He consented that I could use his name in buying land at tax-sale in his name for my accommodation. Of course I was to attend to it and save him from loss or trouble, and I could have the certificates and land stand in his name, and he would assign or convey them to myself or to any one I desired at any time whenever required.

Interro. No. 11. State what was your object in so purchasing land for taxes. State fully how you came to purchase any land in Cass Co. for taxes, and about how much did you so purchase.

482 Answer. I had heard of and seen the revenue laws of Iowa, by which it was provided that, if I bought land at tax-sale, I could get my money back & a penalty of 30 per cent. and the interest on the whole amount. If it was redeemed within three years, it would average or be equivalent to interest at about 20 per cent. annually. If it was redeemed before three years, it would average a little more. But much of it was void sales, being double-assessed railroad land, swamp land, &c., on which no penalty was obtained; so, taking all together, it would not average 20 per cent. annually, not above expenses. But it was my principal object to have it all redeemed & get my money back, with penalty & interest, & not to get the land. But, of course, to get the land it was not redeemed. But I preferred to have it all redeemed, and all that was not redeemed I got deeds for. I sold the first opportunity at about what it would cost to redeem and *and* expenses, costs, &c. I can't state the amount purchased.

483 Interro. No. 12. State if you bought all land just as it came. And, if not, what kind did you purchase, and why?

Answer. I bought, or intended to buy, only such land as would be most likely to be redeemed, that is, such as was only delinquent for two or three years' taxes. I thought that more likely to be redeemed than such land as was delinquent for a longer number of years, & hence had more taxes on it, amounting frequently to as much as the land was worth, and therefore it would not be redeemed; and further, I bought only such land as was whole pieces, not less than forty or eighty acre pieces. I wanted whole pieces or none. I would not have fractional or parts of pieces any way, because if I had them I could only pay the subsequent taxes on such fractional pieces or parts, which would be of great trouble, and, if not redeemed, such parts would not be saleable. I would not have bought any land for less than the whole of each piece; if any one bid against me they could have the land; to buy was

484 the same whether Warford bought in land for me in the name of O. Mead or not, whether I bought any land or not.

Interro. No. 13. State if you know the value of the land so purchased at tax-sale at the time of said sale.

Answer. I did not know the value of the land except generally. I supposed it to be worth a little more than the amount of the taxes.

Interro. No. 14. State, if you know, about how much land was adver-

tised for sale for taxes in Iowa at that time, and your means of knowing.

Answer. I do not know how much, but it must have been several hundred thousand acres—from forty to sixty thousand acres in nearly every county in the State. My means of knowing was from different parties in different counties, and in some instances from the advertised lists.

486 Interro. No. 15. State whether you know or had ever heard of a man by the name of W. B. Beebe, of Ohio, buying in land at said tax-sale, or any other sale, or having any land entered on sale-books in his name as being bought by the treasurer, or any one.

Answer. I do not know him, nor heard of him, nor of anything of the kind.

Interro. No. 16. State whether or not John Warford was employed to bid in land in your name, and also in the name of O. Meads, for the purpose of preventing competition at the tax-sale; and, if he was or was not, state the reason why, if you know of any.

Answer. He was not employed for any such purpose. There was no necessity to have any arrangement to prevent competition, for there were thousands of acres in nearly every county in the State, of as valuable land as in Cass County, for sale. There was more land for
487 sale than persons with money to buy it, and there was no object for it, because I did not know any one who would take the land at a less quantity than the whole for the taxes on the whole. I did not consider, and did not think others generally considered, the land at that time worth much more than the taxes; some perhaps not worth the taxes. I would not buy or have bought any land for taxes at a less quantity than the whole, w'ether Warford or any one else was employed to bid in land for me, either or both in my name & in name of O. Meads or not; and if any one had wanted it for less he could have had it. The reason I did not want parts of whole forty acres or eighty acres is stated in answer 12.

Interro. No. 17. State if there was any agreement or consideration among the bidders at said sale not to bid against each other; and, if there was or was not, state why, if you know.

488 Answer. There was not any that I know of or believe of. And the reason I have before given, there was more land for sale than buyers. Each could get all he wanted without combinations, and the land was not considered worth much more than the taxes. It was in the midst of the war, and land not saleable.

In answer to the following cross-interrogatories, the said Dexter Reynolds deposes and says:

Cross-interro. No. 1. Have you any interest in this suit?

Answer. None whatever that I know of.

Cross-interro. No. 2. What do you understand is the issue in this cause?

Answer. I do not know. Judging from the interrogatories, I should judge it was some question touching the regularity or validity of some tax-sales or tax-titles to land in Cass Co., Iowa.

489 Cross-interro. No. 3. Are you one of the defendants in the above cause?

Answer. I do not know that I am, therefore suppose that I am not; I have never been served with any notice or pleadings in the cause, or seen them.

Cross-interro. No. 4. Have you ever seen any of the pleadings in this cause, or copies of the same?

Answer. I have not.

Cross-interro. No. 5. Have you not received before the giving of this deposition a copy (in substance) of the interrogatories now here propounded to you; and, if so, when did *did* you receive them, and how were they sent to you?

Answer. Some time ago I saw Mr. Callanan personally, and he had some memoranda or interrogatories, whether in this suit or in any suit I cannot tell, a part of which he read to me and asked me what my
490 answer would be to such questions or interrogatories, and I told him, or so far as I could, but I think I did not see them all nor hear them all read; those I saw or heard read were in substance, I think, like some of the ones in this case. My interview with Mr. Callanan was a very brief one, and I did not charge my memory with its purport, the subject-matters of the interrogatories. He may have read them all; no interrogatories were ever sent to me.

Cross-interro. No. 6. Append said interrogatories as sent you to this deposition, and mark them as "Exhibit A."

Answer. I cannot, for the reason I have not got them; they were not left with me; I do not fully remember that I had them in my hand over a few minutes, if I did at all. I think Mr. Callanan read a part of them, perhaps all, to me, and then took them away with him, and I have not seen them since.

Cross-int. No. 7. Did you receive any letter from deft. Callanan
491 or from any other person or persons in relation to your evidence in this case, or the giving or taking of this deposition; if so, from whom and when did you receive such letters; by whom did they purport to be signed? And append the same, or copies thereof, to this deposition as part of your answer to this question.

Answer. I did not, except one or two letters from Mr. Callanan along the latter part of August last, in substance requesting me to appear before W. C. McHarg, the commissioner or person taking this deposition, whenever I returned to the city. I received these letters at Rochester, New York, where I was then temporarily staying, and I think I left them at Geneseo, N. Y., where I have been stopping the last month or so. I have given the substance of them so far as relates to the matters in controversy.

Cross-interro. No. 8. Have you received any other communication or document or paper relating to your evidence or your deposition in this case? If so, append.

492 Answer. I have not.

Cross-interro. No. 9. If for any cause said letters or papers sent you, relating to this examination of you as a witness in this case, are not appended, then append copies of the same, including all writings or pencil-marks thereon, and let the notary taking this deposition compare such copies with the originals and so certify the truth.

Answer. I have neither papers nor copies thereof to append; the only papers I ever received touching this examination are the letter or letters mentioned in my answer in preceding cross-interrogatory; these are at Geneseo, N. Y., 250 miles from here. When I left Geneseo to come to Albany, I came on other business of my own, mainly. Did not know they were of any importance or would be called for, or I would have brought them if requested. I was only requested to come to Albany about this time to be examined.

493 Cross-interro. No. 10. Have you now appended all correspondence or papers received by you relating to this case, or to the giv-

ing of your deposition, or copies of the same? And, if not, now append the same.

Answer. I have, with the exception of the letter or letters from Mr. Callanan in August last, mentioned in my former answers, which, or copies of which, I cannot append for the reasons stated in my answer to the preceding interrogatory.

Cross int. No. 11. What is, and has been heretofore, your business, profession, or occupation?

Answer. I have been a lawyer; that was my profession; have not practiced for some years, and not now in business.

Cross-interro. No. 12. Where is your present business office or house situated, & where are you giving this your deposition?

Answer. My residence is No. 12 Elk street, Albany. I have no
494 permanent business-office; I am giving my deposition at the office of W. C. McHarg, No. 50 State street, Albany.

Cross-interro. No. 13. Who is present during any part of the time you are giving this deposition?

Answer. No one but myself, the commissioner, W. C. McHarg, and his clerk.

Cross-interro. No. 14. Who are your attorneys in this cause?

Answer. I did not know; & do not know that I am a party to the cause, and have no attorneys.

Cross-interro. No. 14. Have you any of the letters written by John Warford to you touching the purchase of said lands in controversy at tax-sale?

Answer. I suppose I have.

Cross-interro. No. 15. Did you give any of them to deft. Callanan at any time?

Answer. I don't think I ever did; I don't think he ever asked
495 me for them or referred to them.

Cross-interro. No. 16. Where are said letters now?

Answer. At my residence, probably stored in my garrett.

Cross-interro. No. 17. Have you in your possession, or under your control, copies of your letters to John Warford touching said tax-sale or the purchase of the lands in controversy at such tax-sales; and, if not, what did you do with them, and did you ever give or send any part of such correspondence to defendant Callanan, and where are such letters and correspondence now?

Answer. I think I have a letter-press copy of every letter I ever sent to Warford in reference to any land he ever purchased for me or under my direction, in my name or in the name of O. Meads. I don't know
496 that I ever gave to Mr. Callanan a copy of said correspondence, or the correspondence itself, or any of it, and am quite shure he never did see said correspondence, or any of it, through me. The correspondence is in my letter-press book in Albany.

DEXTER REYNOLDS.

Subscribed and sworn to before me this 1st day of October, 1873.

W. C. McHARG,
Commissioner.

I hereby certify that on this 1st day of October, 1873, I, William C. McHarg, the commissioner named in the annexed commission, caused to come before me, at my office in the city of Albany, Dexter Reynolds, the person wanted in said commission, and then and there examined him on oath upon the interrogatories annexed to said commission. That I

propounded to the said witness the *I* interrogatories and cross-interrogatories to said commission annexed, and caused the same to be written out, and the answers thereto to be inserted immediately following the respective interrogatories. That I caused the whole to be read
497 over to the witness Dexter Reynolds, and the same to be subscribed by him, and duly sworn to before me.

Dated Albany, Oct. 1, 1873.

W. C. McHARG,
Commissioner.

Commissioner fees $15.00, paid by deft. Callanan.

W. C. McHARG, *Comr.*

(Endorsed:) Filed October 9, 1873. George B. Corkhill, clerk.

498 *Dedimus protestatem.*

CIRCUIT COURT OF THE UNITED STATES,
District of Iowa, ss:

To H. T. Sharp, of Atlantic, Cass County, Iowa, greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested, with full power and authority to examine any and all witnesses who may be brought before you on their corporal oaths as witnesses in a cause depending in the circuit court of the United States for the district of Iowa, wherein Michael Hurley is plaintiff and James Callanan, et ux., are defendants, on the part of the defendants, upon oral interrogatories. And, therefore, you are hereby commanded that at certain days and places, to be appointed by you for that purpose, you do cause the said witnesses to come before you, and then and there examine them on oath upon oral interrogatories.

That such interrogatories and cross-interrogatories as shall be propounded to said witnes' you shall cause to be written out and the answers thereto to be inserted immediately following the respective interrogatories. That you cause the whole to be read over to the witnesses, and the same to be subscribed by them and duly sworn to before you. That you take said deposition in accordance with your certificate, which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned. That you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court at Des Moines, Iowa. That you endorse on the outside of said envelope, thus directed, the title of the cause in which the deposition is to be used, and that you execute this commission with all convenient speed.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, this 1st day of May, 1873, and in the 97th year of the Independence of the United States of America.

Attest:

[L. S.] GEORGE B. CORKHILL,
Clerk of United States Circuit Court, District of Iowa.

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded (whether written or oral) to be written out,

and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole, being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.

All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the deposition and returned with them, unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

499 Circuit court of the United States, district of Iowa.

Order of commissioner.

MICHAEL HURLEY
vs.
JAMES CALLANAN ET AL.

In pursuance of a dedimus protestatem issued by the circuit court of the United States, district of Iowa. on the 1st day of May, A. D. 1873, to me directed, authorizing me to take the depositions of any and all witnesses that might be brought before me in the above entitled cause on the part of the defendants, it is hereby ordered that said depositions be taken at my office in Atlantic, Cass County, Iowa, commencing at 9 o'clock a. m. on the 8th day of September, A. D. 1873, and that
500 notice of the taking of the same, and of the time and place, be served upon the plaintiff at a day not later than the 2nd day of June, A. D. 1873. In testimony whereof I have hereunto set my hand this 3rd day of May, A. D. 1873.

H. T. SHARP,
Commissioner.

501 In the circuit court of the United States for the dist. of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN ET AL. } In equity.

To said plaintiff and Phillips & Phillips, his attorneys :

You are hereby notified that the defts. in the above-entitled cause desires the evidence to be adduced therein taken orally, & that H. T. Sharp has been appointed a commissioner in said cause to take testimony ; that said commissioner has by an order made in said cause fixed his office at Atlantic, Cass County, Iowa, as the place, & Thursday, September 8th, 1873, as the time for taking evidence on the part of defendant, in said cause, where & when you can appear & cross-examine the witnesses if you desire.

BARCROFT, GIVEN & HAMMOND.
Defts.' Attys.

502 We hereby accept due & legal service of the above notice this 10th day of May, 1873.

PHILLIPS & PHILLIPS & J. T. HANNA,
Attys. for Plff.

In the circuit court of the United States for district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN ET AL.

Depositions of witnesses produced, duly sworn, and examined at my office in the town of Atlantic, county of Cass and State of Iowa, and in said district of Iowa, before me, C. T. Sharp, a duly-appointed commissioner of the circuit court of the United States for the district of Iowa, in pursuance of the dedimus potestatem hereto attached, in a certain cause depending in the circuit court of the United States for the district of Iowa, wherein Michael Hurley is plaintiff and James Callanan & others are defendants, on behalf of the defenndats.

WILKINS WARWICK, of lawful age, being produced, carefully examined, cautioned, and duly sworn to testify the truth, the whole
504 truth, and nothing but the truth, deposes and says:

First interrogatory. State your name, age, place of residence, and occupation.

Ans. My name is Wilkins Warwick; age, forty-three years; place of residence, Atlantic, Cass County, Iowa; occupation, county treasurer.

2d int. How long have you been acting as treasurer of said Cass County?

Ans. Seven years and eight months.

3rd int. Have you in your possession and under your custody and control the tax-books, registers of tax-sales, and receipt-books for taxes paid belonging to the office of treasurer of said county?

Ans. I have.

4th int. Have you examined said records in relation to the sales
505 for delinquent taxes and the subsequent taxes paid on the following lands in controversy in this suit, being the south half of the southeast quarter of sec. 8, tp. 74, 34; the W. ½ S. W. ¼ of 18, tp. 74, R. 34; the N. ½ of the N. E. of sec. 3, 74, 35; the N. ½ of N. W. ¼ of 3, 74, 35; the N. W. ¼ of sec. 7, 74, 35; the S. W. ¼ of sec. 7, 74, 35; the N. ½ of the N. W. ¼ of sec. 19, 74, 35; the S. ½ of the N. E. of sec. 11, 74, 36; the N. E. ¼ of N. W. ¼ of 3, 75, 36; the S. W. of N. W.; the N. ½ of N. W. of 25, 75, 36; of 29, 76, 35; the S. ½ of N. W. of 19, 76, 37; the W. ½ of S. W. 19, 76, 37; the N. ½ the W. ½ of N. W. 19, 76, 37, of N. W. of 4, 77, 36, and the S. ½ of the S. E. of 20, 77, 36? If so, state for what years the taxes were delinquent on each of said pieces and the amounts for which the same were sold, and the date of the first sale thereof for delinquent taxes; the amounts of subsequent taxes
506 paid on each piece thereafter, the date of any subsequent tax-sale thereof, the year or years delinquent, and amounts for which the same was sold thereat, also all subsequent taxes paid thereon; the amounts thereof for each year thereafter. State to whom these lands were sold at these tax-sales and by whom these taxes have been paid.

(Objected to by the plaintiff as irrelevant & incompetent, the tax-deeds and the records themselves being the best evidence of the recitations therein contained, and also immaterial.)

Ans. I have examined said records in relation to said sales, and the amounts of taxes paid. The taxes on the S. W. ¼ of S. E. ¼ of sec. 8, tp. 74, R. 34, was delinquent for the years 1861 & 1862; sold Jan'y 4th, 1864, for $2.28 for 1861, $1.10 for 1862; amounts of subsequent tax for 1863 was $1.53; 1864, $1.82; 1865, $2.25; sold Nov. 4th, 1867, for

tax of 1866; amount paid $2.97; amount of subsequent tax
507 paid for 1867, $2.83; 1868, $2.94; sold 1869, $5.60; sold Oct. 2nd, 1871, for the tax of 1870, amount $4.79; amount of subsequent tax paid, for 1871, $6.73; 1872, $5.02.

The taxes on the S. E. ¼ of S. E. ¼ 8, 74, 34 was delinquent for the years 1861 & 1862; sold Jan'y 4th, 1864, for $2.28 for 1861, and $1.10 for 1862; amount of subsequent tax paid, for 1863, $1.53; 1864, $1.82; 1865, $2.25; sold Nov. 4, 1867, for tax of 1866; amount paid, 2.79; amount of subsequent tax paid for 1867, 2.83; 1868, 2.94; 1869, 5.60. Sold Oct. 2nd, 1871, for tax of 1870; amount paid, $4.79; amount of subsequent tax paid for 1871, $6.73; 1872, $5.02.

The taxes on W. ½ of S. W. ¼ of 18, 74, 34 was delinquent for the years 1861 & 1862; sold Jan'y 4th, 1864, for $4.56 for 1861, $2.20 for 1862; amount of subsequent tax paid for 1863, $3.06; 1864, $3.64; 1865, $4.50. Sold Nov. 4, 1867, for tax of 1866; amount paid, 5.59; amount of
508 subsequent tax paid for 1867, 5.66; for 1868, 5.88; 1869, $11.34, tax of 1871, 13.20; 1872, 10.26.

The taxes on the N. ½ of N. E. ¼ of sec. 3, 74, 35 was delinquent for the years 1860, 1861, & 1862, and sold Jan'y 4, 1864, for 4.80 for 1860, 3.28 for 1861, & $1.58 for 1862; amount of subsequent tax paid for 1863, 2.12; 1864, 2 53; 1865, 3.06; sold Nov. 4, 1867, for tax of 1866; amount paid, 3.70; amount of subsequent tax paid for 1867, 3.90; 1868, 4.03; 1869, 7.70; tax of 1871, 6.23; 1872, 6.55.

The tax on the north half of N. W. of 3, 74, 35 was delinquent for the years 1860, 1861, & 1862, and sold January 4th, 1864, for 4.80 for year 1860, 3.28 for 1861, & $1.58 for 1862; amount of subsequent tax paid for 1863, 2.12; 1864, 2.53; 1865, 3.07; and sold Nov. 4, 1867, for tax of 1866; amount paid, 3.70; amount of subsequent tax paid for 1867, 3.90; 1868, 4.03; 1869, 7.83; tax paid for 1872, $6.56.

509 The taxes on N. ½ of N. W. of 7, 74, 35 was delinquent for the years 1860 & 1861 & 1862, and sold January 4, 1864, for 4.46 for 1860, 2.82 for 1861, & for 1862, 1.37; subsequent tax paid for 1863, 2.19; 1864, 2.60; 1865, 3.19; and sold Nov. 4, 1867, for tax of 1866; amount paid, 3.75; amount of subsequent tax paid for year 1867, 4.04; 1868, 4.19; 1869, 7.97; tax paid for 1871, 6.74; for 1872, 7.36.

The taxes on the S. ½ of N. W. of 7, 74, 35 were delinquent for the years 1860, 1861, & 1862, and sold January 4, 1864, for 4.46 for 1860, 2.82 for 1861, & 1.37 for 1862; amount of subsequent tax paid for 1863, 2.21; 1864, 2.60; 1865, 3.19; and sold Nov. 4, 1867, for tax of 1866. Amount paid, 3.76. Amount of subsequent tax paid for 1867, 4.04; 1868, 4.19; 1869, 7.97; tax paid for 1871, 6.75; 1872, 6.77.

The taxes on the N. ½ of the S. W. ¼ 7, 74, 35 were delinquent for
510 the years 1860, 1861, & 1862, and sold January 4, 1864, for 4.46 for 1860, 2.96 for 1861, & 1.55 for 1862. The amount of subsequent tax paid for 1863, 2.20; 1864, 2.63; 1865, 3.19; and sold Nov. 4th, 1867, for tax of 1866; amounts paid 3.76; amount of subsequent tax paid for 1867, 4.04; 1868, 4.27; 1869, 7.97; tax of 1871 paid, 6.62; 1872, 6.80.

The taxes on the S. ½ of S. W. ¼ of 7, 74, 35, were delinquent for the years 1861 and 1862, and sold January 4, 1864, for 5.64 for year 1861 and 2.80 for 1862; the amount of subsequent tax paid for 1863 was 2.20; 1864, 2.63; 1865, 3.19; and sold Nov. 4, 1867, for tax of 1866; amount paid, 3.75; amount of subsequent tax paid for 1867, 4.04; for 1868, 4.27; 1869, 7.97; tax paid for 1871, 6.62; 1872, 6.82.

The taxes on the N. ½ of the N. W. ¼ of 19, 74, 35, were delinquent for the years 1860, 1861, & 1862, and sold January 4, 1864, for
511 $3.44 for 1860; 2.78 for 1861, and 1.35 for 1862; amount of sub-

sequent tax paid for 1863 was 2.26; for 1864, 2.70; for 1865, 3.22; and sold Nov. 4, 1867, for tax of 1866; amount paid was 4.09; amount of subsequent tax paid for 1867, 4.18; 1868, 4.33; 1869, 7.97; tax of 1871 paid, 6.68; 1872, $7.01.

The taxes on the S. ½ of N. E. ¼ of 11, 74, 36, were delinquent for the years 1860, 1861, & 1862, and sold January 4, 1864, for $6.90 for 1860; 1861, 5.58; and for 1862, 2.72; amounts of subsequent tax paid for 1863, 3.06; 1864, 3.64; 1865, 4.50; and sold Nov. 4, 1867, for taxes of 1866; amounts paid was 5.59; amount of subsequent tax paid for 1867, 5.66; 1868, 5.88; 1869, 11.20; tax of 1871 paid $14.96; 1872, 14.22.

512 The taxes on the N. E. ¼ of N. W. ¼ of 3, 75, 36, were delinquent for the years 1859, 1860, 1861, & 1862, and sold January 4th, 1864, for 2.09 for year 1859, 2.60 for 1860, 2.26 for 1861, & 1.64 for 1862; amount of subsequent tax paid for 1863, 1.64; for 1864, 2.13; for 1865, 2.45; and sold Nov. 4th, 1867, for tax of 1866; amount paid, 9.58; amount of subsequent tax paid for 1867, 3.15; 1868, 3.30; 1869, 4.42; tax of 1871, paid 6.98; 1872, $7.10.

The tax on the N. E. ¼ of N. W. ¼ of 25, 75, 36, were delinquent for the years 1860, 1861, & 1862, and sold January 4, 1864, for 2.60 for 1860, 2.26 for 1861, & 1.64 for 1862; amount of subsequent tax paid for 1863, 1.41; 1864, 2.13; 1865, 2.45; and sold Nov. 4, 1867, for the tax of 1866; amount paid, 3.39; amount of subsequent tax paid for 1867, 3.15; 1868, 3.30; 1869, 4.42; tax paid for 1871, $6.96; 1872, 7.08.

513 The taxes on the N. W. of W. of 25, 75, 36, were delinquent for the years 1859, 1860, 1861, & 1862, and sold January 4, 1864, for 2.09 for 1859, 2.60 for 1860, 2.26 for 1861, & 1.64 for 1862; amount of delinquent tax paid for 1863, 1.41; for 1864, 2.13; 1865, 2.45; and sold Nov. 4, 1867, for tax of 1866; amount paid 3.40; amount of subsequent tax paid for 1867, 3.15; 1868, 3.30; 1869, 4.42; tax of 1871, paid 6.96; 1872, 7.08.

The taxes on the S. W. of N. W. 29, 76, 35, were delinquent for the years 1861 & 1862, and sold January 4th, 1864, for 3.38 for 1861, 1.76 for 1862; amount of subsequent tax paid for 1863, 1.61; 1864, 1.51; 1865, 2.45; and sold Nov. 4, 1867, for taxes of 1866; amount paid, 3.08; amount of subsequent tax paid for 1867, 2.75; 1868, 2.55; 1869, $6.00.

514 The taxes on the S. ½ of W. 19, 76, 37, were delinquent for the years 1860, 1861, & 1862, and sold January 4th, 1864, for 5.34, & for 1860, 4.58 for 1861, 3.33 for 1862; amount of subsequent tax paid for 1863, 2.51; 1864, 3.71; 1865, 4.90; & sold Nov. 4, 1867, for the taxes of 1866; amounts paid, 4.92; amount of subsequent tax paid for 1867, 4.95; 1868, 5.55; 1869, 6.86; taxes of 1871 paid on S. W. ¼ of N. W., 6.17; paid on the 80 acres for 1872, 13.76.

The taxes on the N. W. of N. W. of 19, 76, 37, were delinquent for 1861, 1861, & 1862, and sold January 4, 1864, for 2.20 for 1860, 1.83 for 1861, & 1.30 for 1862; amount of subsequent tax paid for 1863, 1.11; for 1864, 1.64; 1865, 2.45; and sold Nov. 4, 1867, for the taxes of 1866; amounts paid, 2.46; amount of subsequent tax paid for 1867, 2.19; 1868, 2.49; 1869, 3.03; tax of 1871, paid 6.17; 1872, 6.07.

515 The taxes on W. ½ of S. W. of 19, 76, 37, were delinquent for the years 1860, 1861, & 1862; and sold January 4, 1864, for 4.40 for 1860, 3.66 for 1861, and 2.60 1862; amount of subsequent tax paid for 1863, 2.22; 1864, 3.28; 1865, 3.92; and sold Nov. 4, 1867, for the taxes of 1866; amount paid 4.75; amount of subsequent tax paid for 1867, 4.38; 1868, 4.98; 1869, 6.00; tax of 1871 paid, 14.00; 1872, $13.75.

The taxes on the N. ½ of N. W. of 4, 77, 36, were delinquent for the years 1861 & 1862, and sold January 4, 1864, for 5.78 for 1861, 3.88,

for 1862; amount of subsequent tax paid for 1863, 3.06; 1864, 4.00; 1865, 4.10; and sold Nov. 4th, 1867, for the taxes of 1866; amount paid 5.61; amount of subsequent tax paid for 1867, 5.04; 1868, 6.22; 1869, 8 00; tax of 1871 paid, 15.44; 1872, 16.70.

516 The taxes on the S. ½ of S. E. of 20, 77, 36, were delinquent for the year 1863, and sold January 2nd, 1865, for 4.30 for 1863; amount of subsequent tax paid for 1864, 4.12; 1865, 4.10; 1866, 3.90; 1867, 8.40; and sold Nov. 1st, 1869, for the taxes of 1860, 1861, & 1868, for 12.76 for 1860, 14.94 for 1861, 9.66 for 1868; amount of subsequent tax paid for 1869, 8.00; and sold Nov. 6, 1871, for the tax of 1870, to H. Trumples, & assigned to J. Callanan; amount paid, 9.95; amount of subsequent tax paid for 1871, 15.98.

These lands were sold January 4, 1864, (the first sale,) to O. Meads: The S. ½ of N. W. of 19, 76, 37; the N. W. of N. W. of 19, 76, 37; the W. ½ of S. W. of 19, 76, 37; N. ½ of N. W. of 4, 77, 36. The balance of above-described lands were sold to Dexter Reynolds at the 2nd sale, Nov. 4, 1867; these lands were sold to the same parties at the sale of January 2nd, 1865.

517 The following piece was sold to Dexter Reynolds: The S. ½ of S. E. ¼ 27, 77, 36; and same piece was again sold Nov. 1st, 1869, to James Callanan. The S. ½ of S. E. ¼, 8, 74, 34, and S. W. ¼ of 7, 74, 35 was sold to Isaac Dickerson, Oct. 2, 1871, and the certificates assigned to James Callanan. The above amounts of taxes were all paid by O. Meads, Dexter Reynolds, and James Callanan.

(The plaintiff objects to the answer, for the reason that the same is not responsive to the question, and claims to give a portion of the record of the tax-sales at which the lands is disputed were sold, instead of the whole record of such sale so far as the same relates to these lands.)

By agreement of the parties the further taking of these depositions is adjourned to to-morrow, Sept. 9th, 1873, at 9 o'clock a. m., then to be continued at the same place.

518 H. T. SHARP,
Commissioner.

Pursuant to the adjournment as above stated, on this 9th day of September, 1873, I continued the taking of these depositions.

WILLIAM WARWICK, in continuance of his deposition, deposed as follows:

5th int. At what times were the taxes subsequent to these sales and prior to the taxes of 1870 paid, as shown by said records?

(Objected to by plff. as immaterial, irrelevant, and incompetent, the records themselves or the receipts being the best evidence of such payments, if any were made.)

Ans. I think they were all paid in Feb'y, March, April, & June, after they became delinquent.

6 int. Were the taxes of 1861 & 1872 paid by their defendants, as above mentioned, paid before they became delinquent or afterwards?

519 (Objected to by plff. same as last above.)

Ans. The taxes on S. ½ S. E., 8, 74, 34, for 1871, were paid Feb'y, 1872, by James Callanan; for 1872, paid in Feb'y, 1873, by James Callanan; W. ½ S. W. ¼, 74, 34, for 1871, was paid in January, 1872, by James Callanan; also, tax for 1872, paid in January, 1873, by Callanan.

The W. ½ of N. E., 3, 74, 35, was paid January, 1872, by Callanan; & taxes for 1872 paid in January, 1873, by Callanan.

Taxes N. ½ Q., N. W. Q., 5, 74, 35, for 1872, paid January, 1873, by Callanan; tax on N. W. ¼ Q., 7, 74, 35, for 1871, paid January, 1872, by Callanan; & tax of 1872, paid Jan'y, 1873, by Callanan.

Taxes on S. W. ¼ of 7, 74, 35, for 1871, was paid in April, 1872, by Callanan.

Taxes for 1872, paid Feb'y, 1873, by Callanan.

520 Taxes on N. ½ N. W. 19, 74, 35, for 1871, paid in January, 1872; & for 1872, paid in January, 1873.

Taxes on S. ½ N. E. 11, 74, 36, for 1871, paid January, 1872; & for 1872, paid in January, 1873.

Taxes on N. E. N. W. of 3, 75, 36, for 1871, paid in January, 1872; & for 1872, paid in January, 1873.

On W. ½ of N. W. 25, 75, 36, for 1871, paid in January, 1873.

On W. ½ of N. W. 19, 76, 37, for 1871, paid in January, 1872; & for 1872, in January, 1873.

On W. ½ of S. W. of 19, 76, 37, for 1871, paid in January, 1872; and for 1872, paid in January, 1873.

On N. ½ of S. W. 4, 77, 36, for 1871, paid in January, 1872; & for 1872, in January, 1873.

521 On S. ½ of S. E. 20, 77, 36, for 1871, paid in April, 1872.

7th int. How and by whom were the taxes on the lands in suit paid for the year 1870?

(Same obj. by plff. as last above.)

Ans. They were sold for taxes in October, 1871, to different parties, and part of the certificates have since been assigned to James Callanan.

On cross-examination the witness testified as follows:

1st cross-int. Was the assignment in writing, or verbal, of the said certificates?

Ans. Those I saw were assigned in writing.

2nd cross-int. How many and to what pieces were the assignments you saw?

Ans. There was eight pieces assigned to James Callanan: S. W.

522 S. E. 8, 74, 34; S. E. S. E. 8, 74, 34; S. W. ¼ 7, 74, 38; S. ½ of S. E. of 20, 77, 36.

3rd cross-int. Are you the defendant's (Callanan's) agent or attorney?

Ans. I am not. I sometimes pay taxes for him.

4th cross-int. Have you stated exactly what your record shows in relation to these lands?

Ans. I think I have, but would not be positive about everything.

5th cross-int. Have you stated all that your record shows?

Ans. I have not.

6th cross-int. State what you have omitted in your direct examination.

Ans. I can't tell. I do not remember what I have omitted.

523 7th cross-int. Why is it that what you have stated is so fresh in your memory, and say that there is much omitted in your answers to direct interrogatories, yet unable to tell what is omitted?

Ans. It is fresh in my memory because Mr. DeLan has furnished me with a list of the lands sold, to whom sold, stating the amount of taxes that had been paid by Reynolds, Meads, & Callanan. I have examined the register of sales, tax lists, and stubs of the receipts, & find them to compare with said lists. I do not say there is much omitted, but say there may be considerable omitted.

8th cross-int. In your answer to the 4th direct interrogatory you give what purports to be the record-history of the lands in this suit. Now, does your answer to said interrogatory embrace the complete

524 record-history of these lands so far as the records of your office is concerned?

(Objected to by defts. as immaterial.)

Ans. It does not. The lands were sold in 1871. It does not give the names of the different bidders.

9th cross-int. In your answer, then, to the 4th cross-interrogatory, you only pretended to give a part of the record instead of the whole relating to these lands?

Ans. I have given it complete, so far as I know or remember about (in) that part of it called for.

10th cross-int. Does your answer to 4th direct interrogatory embrace a complete record with regard to these lands, as shown by the record in your office? Answer yes or no.

(Objected to as immaterial and irrelevant, and as a repetition of the former question, which has been answered.)

Ans. I think it does not.

525 11th cross-int. Do your records show that these lands were redeemed from the sale of Nov. 4th, 1867?

(Objected to by the defendants as being immaterial and irrelevant, and as not being the best evidence of a redemption; not proper cross-examination, and calling from the witness a legal conclusion rather than the statement of a fact.)

Ans. I think it shows that most of them were redeemed. I don't remember whether it shows that all were redeemed or not.

12th cross-int. What does it show that they were redeemed?

(Objected to by the defendants for the same reasons as to cross-interrogatory No. 11.)

Ans. I do not remember at what time, without looking at the records.

526 13th cross-int. State whether or not your record makes any showing of these lands having been redeemed; and, if so, by whom and from what sale, and when, and what tracts, if any, are marked in your record as redeemed?

(Objected to by the defendants for the same reasons as in cross-interrogatory No. 11.)

By agreement of the parties the further taking of these depositions is adjourned until the 26 day of September, 1873, at 10 o'clock a. m., then to be continued at the same place.

H. T. SHARP,
Commissioner.

Pursuant to the adjournment above stated on this 26 day Sept., 1873, at 10 o'clock, and I continue the taking of these depositions.

WILLIAM WARWICK, in continuance of his deposition, deposed as follows:

Ans. The W. ½ N. W. 19, 76, 37, & S. E. of N. W. 19, 76, 37 was redeemed, as shown by my record, by M. Hurley, April 14, 1870,

527 from the sale of Nov. 4, 1867; the N. ½ of N. W. of 4, 77, 36, by M. Hurley, Feby. 25, 1870, from sale of Nov. 4, 1867; the S. W. of N. W. of 29, 76, 35, by M. Hurley, April 13, 1870, from same sale; the N. ½ of N. W. 25, 75, 36, by M. Hurley, May 24, 1870, from same sale; the S. ½ of S. E. of 8, 74, 34, by M. Hurley, May 24, 1870, from same sale; the W. ½ of S. W. of 18, 74, 34, by M. Hurley, May 24, 1870, from same sale; the N. ½ of N. E. & N. ½ of N. W. 3, 74, 35, by M. Hurley, May 24, 1870, from same sale; the N. W. ¼ of 7, 74, 35, by M. Hurley, April 22, 1870, from same sale; the S. W. ¼ of 7, 74, 35, by M. Hurley, May 24, 1870, from same sale; the N. ½ of N. W. of 19, 74, 35, by M.

Hurley, April 13, 1870, from same sale; the S. ½ of N. E. of 11,
528 74, 36, by M. Hurley, April 13th, 1870, from same sale.

14th cross-int. State whether or not the records in your office show either or any of the tracts mentioned in your answer to the 4th interrogatory-in-chief to have been sold at an adjournment or adjournments of the sale began and held on the 4th day of January, 1864; if so, state what pieces were sold at such adjournment, and the date when sold.

Ans. There were none of these pieces sold at an adjourned sale of January 4th, 1864.

(Signed) WILKINS WARWICK.

Examination taken, reduced to writing, and by the witness Wilkins Warwick subscribed and sworn to this 26 day of September, A. D. 1873, before me.

(Sgd.) H. T. SHARP,
Commissioner.

529 ISAAC DICKERSON, of lawful age, being produced, carefully examined, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

First int. State your name, age, place of residence, and occupation.

Ans. My name is Isaac Dickerson; age, 42 years; residence, Atlantic, Cass County, Iowa; occupation, real-estate dealer.

2nd int. Were you treasurer of Cass County, Iowa, during the years 1862, 1863, & 1864?

A. I was.

3 int. Was the tax-sale of Nov., 1862, in said county adjourned without disposing of the entire list of delinquent-tax lands; and, if so, why was it adjourned and for what length of time?

530 (Objected by plff. as leveling, irrelevant, incompetent, not being the best evidence of what was then and there done.)

Ans. It is my recollection that the entire list not sold at the Nov. sale, nor at any time in that year, and it was adjourned from month to month, as provided by law; and the cause of the adjournment was that the delinquent lands were not all sold.

4th int. State if notices of these adjournments were posted in the treasurer' office.

(Same obj. by plff. as last above.)

Ans. Notices were posted in the the treasurer' office as provided by law.

5th int. Until what time were the adjournments of the sale of 1862 made and kept up?

(Obj. of plff. same as above.)

Answer. They were made and kept up until the time of the regular sale the next year.

531 6th int. At what time was the regular tax-sale of 1863 held; and if later than the first Monday in October, 1863, state the cause thereof, if you recollect.

(Same obj. by plff. as above.)

Answer. The regular sale for 1863 was held January 4th, 1864, and the cause of not having it sooner, we could not get the list out and properly advertised any sooner.

On cross-examination the witness testified as follows:

First cross-int. On what day of the month was the tax-sale of 1862 held.

Answer. It was on the first Monday of the month, according to my recollection.

2nd cross-int. What month?

Answer. It was either Oct. or November; I am not positive which.

3rd cross-int. To what date was it adjourned?

532 Ans. It was adjourned until the first Monday of the next month.

4th cross-int. How was that adjournment made?

Ans. By declaring the sale adjourned, and by posting a notice in the treasurer's office.

5th cross-int. Was the notice so posted in writing?

Ans. All such notices were posted in writing.

6th cross-int. Produce said notice, and allow the commissioner to attach a copy thereof to this deposition as a part of your answer.

Ans. I could not produce such notices, as I have not got them, and have no copies of them.

7th cross-int. What has become of them?

Ans. I don't know, as they were of no value after they were stuck up.

533 8th cross-int. Was there more than one said adjournment?

Ans. There was.

9th cross-int. How many such adjournments were there?

Ans. I can't say how many there were from the regular sale of 1862. It was adjourned by regular adjournments up to the sale of 1863, and no adjournment was for more than 2 months.

10 cross-int. Do you swear positively that no adjournment was for a longer time than two months?

Ans. I don't think there was any adjournment for a longer time than two months, as it would not have been legal.

11th cross-int. Was it because it would not have been legal that you did not adjourn for longer than two months at any one time?

534 Ans. I don't know of any other reason.

12th cross-int. Is the fact that it would not have been legal that now makes you think that you did not adjourn for longer than two months at any one time?

Ans. That would be a sufficient reason for not adjourning it longer, as I wished to go according to law.

13th cross-int. Did you or did you not know, at the time that those adjournments were being made, that an adjournment of a tax-sale for more than two months at any one time would be illegal?

Ans. I so understood the law at the time.

14th cross-int. Is the fact of your understanding the law at that time the only reason you now have of thinking that those adjournments were none of them for longer than two months at any one time?

535 Ans. It is not the only reason.

15th cross-int. State what other reason you have?

Ans. I know that the sale was adjourned from time to time, and I now know that I then knew that an adjournment for more than two months at a time would be illegal.

16th cross-int. State how you now know that you then complied with the law.

Ans. I had the law before me, and it was my intention to go by the law.

17th cross-int. State how you now know that you then complied with the law.

Ans. I had the law in my office, and it was my duty to know what the law was, & I complied with it so far as I knew.

18 cross-int. State your reasons for thinking that you then complied with the law.

536 Ans. From the fact that the law was before me, & I think I had common sense.

19th cross-int. Is that the only reason you have for thinking that you complied with the law?

Ans. It is not.

20th cross-int. What other reasons have you for thinking that you complied with the law?

Ans. I posted up the notices.

21st cross-int. Do you swear positively that neither of said adjournments was for a longer period than two months at any one time?

Ans. I do not wish to swear positively to a transaction that took place so long ago, but I knew that a longer adjournment would be illegal, and I do not believe that I made a longer adjournment than that provided by law.

537 22nd cross-int. Does not your remembrance of what you then done result more from your present knowledge of the law than from particular acts that took place at that time.

Ans. It does not, because I recollect of putting up the notices.

23rd cross-int. Is your recollection of posting notices for the adjouints every two months, up to the time of the next regular tax-sale clear and distinct.

Ans. It is as clear and distinct as any transaction that I could have done so long ago.

24th cross-int. Might you not have let some of those adjou'ments run over for a longer time than two months?

Ans. I don't think I did.

25th cross-int. Did your regular adjournments bring the ad-
538 journments of sale to January 4th, 1864?

Ans. That is my recollection.

26th cross-int. Is your recollection as good on that point as any other that you have testified to?

Ans. Yes.

27th cross-int. Now state the month in which the tax sale for 1862 was begun and held.

Ans. It was either in October or November.

28th cross-int. State which one of those months.

Ans. I am not positive which.

29th cross-int. Is your memory as distinct on that point as on either of the others that you have testified to?

Ans. It is not.

30th cross-int. Why does your memory fail you on this point?

539 Ans. I don't know that my memory does fail on that point; the regular tax-sale would commence either in Oct. or Nov. by law, and the others is of acts that I performed and done, & this merely refers to date.

31st cross-int. Do you mean to say that you took no part and did no acts with regard to this sale, but only done acts in regard to the adjour'ments.

Ans. I don't mean to say anything of the kind. I only mean to say

that my recollection is not clear whether the sale was on the first Monday in Oct. or first Monday in Nov.

32nd cross-int. Was this sale of January 4, 1864, an adjourned sale.

Ans. It was both an adjourned sale and a regular sale, as I understand it.

540 33rd cross-int. State in what manner it was both an adjourned and a regular sale.

Ans. It was an adjourned sale so far as the delinquent taxes previous to 1862 was concerned, and a regular sale for the delinquent taxes of 1862; that is as I understand it.

34 cross-int. Was there land sold at each of the adjournments of the sale of 1862?

Ans. I could not now state; if there was, the records would so show.

35th cross-int. State how it comes that you can't remember whether or not there was any lands sold at any of these adjou'ments, but so distinctly remember the exact length of time of each adjour'ment.

Ans. It comes from the fact that I would not charge my memory of the sales, as it would be a matter of record; but the law made
541 it my duty to make these adjou'ments from time to time, and I knew that it was my intention to comply with the law.

36 cross-int. Is that the only reason you have to offer?

Ans. It is not.

37th cross-int. What other reason have you?

Ans. There might be sales made at those adjournments, and after they were made there would be no particular reason why I should remember the sales, as they would be a matter of record; but the adjournments themselves, I remember distinctly of writing out the notices and posting them up in the offices.

38 cross-int. If you remember so distinctly of those adjournments, state whether or not any of them was for a less time than two months.

Ans. There might have been adjournments for a less time than two months.

542 39 cross-int. What is your recollection of the facts?

Ans. My general recollection is that they were for two months, generally.

40th cross-int. Were the lands included in the advertised list for 1862 again advertised for the sale of January 4th, 1864?

(Objected to by defendants; not the best evidence, and as improper cross-examination.)

Ans. I think likely they were, as it would have been proper to so advertise them.

41st cross-int. If it was an adjourned sale of the delinquent taxes of the year 1862 and prior years, what was the idea in re-advertising?

Ans. In order to bring up all the taxes that were delinquent.

42nd cross-int. How were those delinquent lists advertised?

543 (Objected to by the defts. as immaterial, irrelevant, not the best evidence, and not proper cross-examination.)

Ans. In a weekly newspaper published in Cass County.

43rd cross-int. What was the name of the newspaper?

Ans. It was either the Cass County Messenger or the Cass County Gazette.

44th cross-int. Was it published in both?

Ans. It was not.

ISAAC DICKERSON.

Examination taken, reduced to writing, and by the witness Isaac

Dickerson subscribed and sworn to this 26th day of September, A. D. 1873.

H. T. SHARP,
Commissioner.

544 WILLIAM GARDNER, of lawful age, being produced, examined, and duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says:

First interrogatory. State your name, age, place of residence, and occupation.

Ans. My name is William Gardner; age, forty-four years; place of residence, Atlantic, Cass County, Iowa; occupation, county auditor of Cass County, Iowa.

2nd int. State whether, as auditor of said county, you have in your possession the books, records, and papers belonging to said office.

Ans. I have.

3rd int. Please examine your register for the tax-sale of Nov. 4, 1867, and state whether or not the monies paid in by plaintiff as
545 a redemption therefrom has ever been drawn from your hands by the defendants, or either of them, on the following lands, to wit: The S. ½ S. ½ of 8, 74, 34; W. ½ S. W. 18, 74, 34; N. ½ N. E. of 3, 74, 35; N. ½ of N. W. 3, 74, 35; the N. W. ¼ of 7, 74, 35; S. W. ¼ of 7, 74, 35; N. ½ of N. W. 19, 74, 35; S. ½ N. E. of 11, 74, 36; N. E. of N. W. of 3, 75, 36; W. ½ of N. W. of 25, 75, 36; S. W. of N. W. 29, 76, 35; S. ½ of N. W. 19, 76, 37; N. W. of N. W. of 19, 76, 37; the W. ½ of S. W. of 19, 76, 37; N. ½ of N. W. of 4, 77, 36; N. ½ of N. W. of 2, 74, 35; W. ½ of N. W., of 18, 74, 35, and N. E. of N. W. of 18, 74, 35.

(Objected to by plaintiffs as irrelevant, immaterial, incompetent, and not the best evidence of the matters called for.)

Ans. The monies have not been drawn on above-described lands, and the N. E. of N. W. of 3, 75, 36 is not redeemed, as shown by my
546 books, and the N. ½ of N. W. of 2, 74, 35, I don't find on my register.

(Plff. objects to the answer as not responsive.)

4th int. Please examine the register of tax-sales for Nov. 1st, 1869, and state whether or not the monies paid by plaintiff on the S. ½ of S. E. of 20, 77, 36, as a redemption therefrom, have been drawn from your hands by the defendants, or either of them.

(Objected to by the plff. as immaterial, incompetent, and irrelevant.)

Ans. It has not.

5th int. Have you in your possession the delinquent-tax list as advertised for the regular tax-sale of 1862; and, if so, will you produce the same and permit the commissioner to attach a copy of the treasurer's notice of sale as a part of your answer hereto?

(Objected to by plff. as irrelevant, immaterial, & incompetent.)

547 I have the list in my possession, and now produce the same for the commissioner to make a copy of treasurer's notice, to attach to this my deposition.

(Here the witness produces the tax-lists, and a copy of the treasurer's notice on same is attached to this deposition, marked "Exhibit A.") Com.

On cross-examination the witness testified as follows:

First cross-interrogatory. How do you know that the paper you have produced here contains the delinquent-tax list for 1862?

Ans. All I know about it is the date is on it.

2nd cross-int. Has the money paid in to redeem the aforesaid lands been subject to the order of defendants at all times since in your hands?
(Objected to by defendant as immaterial.)
Ans. It has.

548 3rd cross int. Has the plaintiff, to your knowledge, done anything to prevent defendants from drawing the money in your hands as redemption money on said lands?
(Objected to by defendants as immaterial.)
Ans. Not to my knowledge.
4th cross-int. Is the said money so paid to redeem said lands now in your hands, and subject to the order of the defendants?
(Objected to by defendants as immaterial.)
Ans. It is.
5th cross-int. Now produce the entire delinquent-tax lists of 1862, and allow the commissioner to attach a copy thereof as a part of your depositions so far as the same relates to the lands involved in this suit as required to in interrogatorys No. 3 & No. 4 in chief.
Ans. I here produce the tax list required, for the commissioner to
549 make a copy of same to attach to this my deposition.
Which is accordingly done and marked "Exhibit B."
(Sgd.) WM. GARDNER.

Examination taken, reduced to writing, and the witness William Gardner subscribed and sworn to this 26th day of September, A. D. 1873, before me.

H. T. SHARP,
Commissioner.

550 EXHIBIT A.—*Delinquent-tax list of Cass County, Iowa.*

TREASURER'S OFFICE, CASS COUNTY, IOWA,
September 15th, 1862.

Notice is hereby given that the following-described real estate will be offered at public sale at the court-house door in Lewis, the county-seat of said county, on Monday, the third day of November, A. D. 1862, at 10 o'clock a. m. for the delinquent taxes, interest, and costs then due for the year and years herein stated, and will continue to be offered from day to day until all is sold, unless sooner paid.

ISAAC DICKERSON,
Treasurer of Cass Co., Iowa.

I hereby that the above is the Exhibit A refered to by the witness William Gardner in his answer to interrogatory No. 5.

H. T. SHARP,
Commissioner.

551 EXHIBIT B.

Part of section.	S.	T.	R.	A.	'57.	'58.	'59.	'60.	'61.	Total. Int.	Total. Costs.	Total.
S. E. S. E	8	74	34	40	.....	.....	.....	.....	162	16	10	188
S. W. S. E	8	74	34	40	.....	.....	.....	.....	162	16	10	188
S. W. S. W	18	74	34	40	.....	.....	.....	.....	106	10	10	126
N. W. S. W	18	74	34	40	.....	.....	.....	.....	106	10	10	126
S. E. N. E	3	74	35	40	.....	.....	.....	.....	162	11	10	183
S. W. N. E	3	74	35	40	.....	.....	.....	.....	162	11	10	183
S. E. S. E	3	74	35	40	.....	.....	.....	.....	162	11	10	183
N. E. S. E	3	74	35	40	.....	.....	.....	.....	162	11	10	183
S. W. N. W	7	74	35	40	.....	.....	.....	192	162	62	20	436
N. E. N. W	7	74	35	40	.....	.....	.....	192	162	62	20	436
N. E. S. W	7	74	35	40	.....	.....	.....	136	90	41	20	287
N. W. S. W	7	74	35	40	.....	.....	.....	136	90	41	20	287
S. W. N. E	11	74	36	40	.....	.....	.....	192	162	41	20	287
S. E. N. E	11	74	36	40	.....	.....	.....	192	162	41	20	287
N. W. N. W	2	74	35	40	.....	.....	.....	.....	190	41	20	284
N. E. N. W	2	74	35	40	.....	.....	.....	.....	190	41	20	284
N. E. N. W	18	74	35	40	.....	.....	.....	.....	162	16	10	188
N. W. N. W	18	74	35	40	.....	.....	.....	.....	162	16	10	188
S. W. N. W	18	74	35	40	.....	.....	.....	.....	162	16	10	188
S. W. S. W	7	74	35	40	.....	.....	.....	.....	106	10	10	126
S. E. S. W	7	74	35	40	.....	.....	.....	.....	106	10	10	126
S. W. N. W	7	74	35	40	.....	.....	.....	.....	82	38	20	265
S. E. N. W	7	74	35	40	.....	.....	.....	125	82	38	20	265
N. E. N. W	4	77	36	40	.....	.....	.....	.....	166	16	10	192
N. W. N. W	4	77	36	40	.....	.....	.....	.....	166	16	10	192
S. W. S. E	20	77	36	40	.....	.....	.....	138	166	49	20	373
552 S. E. S. E	20	77	36	40	.....	.....	.....	138	166	49	20	373
N. E. N. W	3	75	36	40	.....	.....	.....	145	128	86	50	594
N. E. N. W	25	75	36	40	.....	.....	.....	145	128	46	20	504
N. W. N. W	25	75	36	40	.....	.....	95	145	128	86	50	504
N. W. N. W	19	76	37	32	.....	.....	.....	121	109	40	20	290
S. W. N. W	19	76	37	32	.....	.....	.....	121	109	40	20	290
N. W. S. W	19	76	37	32	.....	.....	.....	121	109	40	20	290
S. W. S. W	19	76	37	32	.....	.....	.....	121	109	40	20	290
S. W. N. W	29	76	35	40	.....	.....	.....	.....	196	19	10	225

I hereby certify that the above is the Exhibit B referred to by the witness William Gardner in his answer to cross-interrogatory No. 5.

H. T. SHARP,
Commissioner.

553 Circuit court of the United States, district of Iowa, ss:

I, H. T. Sharp, a duly-appointed commissioner of the United States for the district of Iowa, do hereby certify that, by virtue of a dedimus potestatem to me directed by the said circuit court of the United States, the same being hereto attached, investing me with full power and authority to examine any and all witnesses that might be brought before me in a cause depending in the circuit court of the United States for the district of Iowa, wherein Michael Hurley is plaintiff, and James Callanan et al. are defendants, on the part of the defendants, I did, on 3rd day May, 1873, make an order directing that said depositions be taken before me, at my office in Atlantic, Cass County, Iowa, on the 8th day of September, A. D. 1873, commencing at 9 o'clock a. m.,
554 and directing that notice of the time and place of taking said depositions be served upon the said plaintiff not later than the 2nd day of June, 1873, which said order and notice are hereto attached; that on the day fixed in said order and notice I attended at my office, in Atlantic aforesaid, there being present the defendants, by L. L. De Lano, their attorney, and the plaintiff, by J. T. Hanna, his attorney, and the witnesses, William Warwick, Isaac C. Dickerson, and William Gardner;

and the said witnesses being by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and carefully examined, the examination of each witness was by me reduced to writing in his presence, and by me carefully read over to the witness, and by each of them duly signed and sworn to before me, and in my presence, and said depositions are herewith returned; and I further certify that I am not counsel nor attorney for either party, and have no interest whatever in this
555 event of the cause named in said deposition and caption.

In testimony whereof I have hereunto set my hand this 10 day of Oct., A. D. 1873.

H. T. SHARP,
Commissioner duly appointed by the Circuit Court of the United States for the District of Iowa.

(Endorsed:) Filed Oct. 11th, 1873. George B. Corkhill, clerk.

556 *Notice to take deposition.*

In the circuit court of the United States for the district of Iowa.

MICHAEL HURLEY, PLAINTIFF,
against
JAMES CALLANAN ET ., DEFENDANT'.

Notice.

To MICHAEL HURLEY:

You are hereby notified that the defendant, James Callanan, will, on the 3rd day of October, 1873, at the office of Barcroft, Given and Hammond, in Des Moines, County of Polk, and State of Iowa, before C. P. Holmes, a special commissioner of said court to examine witnesses in said cause, proceed to take the deposition of James Callanan to be read as evidence in the trial of the above-entitled cause. The taking of said deposition will be commenced at 9 o'clock a. m. of said day, and will be continued from day to day until completed.

BARCROFT, GIVEN & HAMMOND,
Atty. for James Callanan.

557 (Endorsed:) It is hereby ordered that ten days' notice of the time and place of taking depositions by deft. in the within-entitled cause be given by defendant to attys. of plff., C. P. Holmes.

(Also endorsed:) We acknowledge service of the within notice by copy thereof delivered to us this 20th day of Sept., A. D. 1873. Louis Ruttkay, with Phillips & Phillips, attys. for complt.

558 Depositions of witnesses produced, sworn, and examined at the office of Barcroft, Given & Hammond, in Des Moines, Iowa, before me, C. P. Holmes, commissioner appointed by circuit court of the United States for the district of Iowa to take depositions of witnesses pursuant to the annexed notice on the 3rd day of October, 1873, in a cause now pending in said court, wherein M. Hurley is plaintiff & James Callanan, jr., et ux are defendants, on the part of said defendants, J. R. Barcroft, esq., appearing as atty. for defendants & Wm. Phillips as atty. for plaintiff.

JAMES CALLANAN being produced, sworn, & examined for defendant, deposed as follows:

Int. 1. What is your name, age, occupation, and place of residence?

Ans. James Callanan, jr.; lawful age; real-estate dealer; Des Moines, Ia.

559 Int. 2d. Are you acquainted with the parties to this action, and are you the defendant in this action?

Ans. I know the plaintiff, and I am the defendant.

Int. 3. Had you any interest in the land in controversy at the commencement of this action? If so, state what it was, when and how it arose, and your relation to said lands at that time.

Ans. I had. It was by a contract of purchase made Feby. 1st, 1868, between Dexter Reynolds and myself, embracing the land in controversy and other land, and on which I had paid about four-fifths of the purchase-money or more, Dexter Reynolds being the owner of all the land that stood in the name of O. Meads, as well as in his own name, he having furnished the money by which they were purchased at tax-sale.

560 Int. 4. State what, if any, changes have been made in your relation to said lands since the commencement of this action.

Ans. This suit was commenced in Jany., 1872. The contract of purchase, from Reynolds, embraced nearly fifty thousand acres, and in Jan'y, 1872, I had paid him the full amount of the purchase-money, which was over thirty thousand dollars, except about four thousand dollars, and which paid for all the land except about four thousand acres. And about the 20th Jany., 1873, there was about $1,600 yet due to Reynolds from me on the contract of purchase, which I paid and took deeds for all the land that had not been deeded before that time, but I took the deeds from Reynolds and Meads for this land in controversy on the 16th Dec., 1872, that I had paid for it and was entitled to a deed in the year 1869.

561 Int. 5. How much or what proportion of the land sold or struck off in *in* the name of D. Reynolds and O. Meads at the tax-sale, Jany., 1864, by the treasurer of Cass Co. were redeemed and what proportion went to deed?

(Objected to by complainant because immaterial, irrelevant, & not the best evidence.)

Ans. I do not know how many acres were struck off to them or either of them, but there was about ten or twelve thousand acres that were deeded to them both in 1867 by the treasurer of Cass Co.

Int. 6. State if you know what amount of taxes have been paid on the lands in this suit since the years for which the said lands were sold, and by whom paid and when.

Ans. Dexter Reynolds paid the subsequent taxes on said lands for the years 1863, 1864, 1865, & 1866, & I paid for the years 1867,
562 1868, 1869, 1870, 1871, & 1872. The amount of tax—

For 1863 was 43.75.
" 1864 " 53.79.
" 1865 " 64.88.
" 1866 " 84.38.
" 1867 " 82.28.
For the year 1868, 88.30.
" " " 1869, 140.70.
" " " 1870, 133.28.
" " " 1871, 159.61.
" " " 1872, 153.93.

Said payments were all made in the Feby. following the time they were due or when they became delinquent, except in perhaps a couple of instances they were paid a month or two after.

Int. 7. State if you know, and your means of knowing, whether at the tax sale in Cass Co. & in the other counties in Western Iowa for delinquent taxes previous to and in 1864 there was any competition in buying lands at tax-sales in ; if not, state why not.

(Objected to by complainant because, 1st, immaterial, &, 2nd, irrelevant.)

563 Ans. I have examined the registers of *of* some 10 or 12 counties in the western part of this State & by inquiry & information from parties in several counties in the western part of the State, and from such knowledge & information will state that there was no competition at any tax-sales previous to 1865 & 1866; not much of any 1865. The reason is because wild land was not considered worth much more than the amount of taxes then due on it, & considerable of it was not worth the taxes, and because no person wanted or would be willing to buy fractional pieces—that is, pieces for less than a whole forty acres—unless it may be a Government fraction, and pay the amount of taxes on the whole piece; that the principal object of tax-purchasers was to get the penalty & interest on their investments & not to get the land, & if they bought in a piece of land for a less number of acres than the whole of it,

564 they could only pay the subsequent taxes on such fractional part, which made a good deal of trouble & annoyance, & then if it should not be redeemed and they got deeds for it from the treasurer, such fractional pieces would be unsaleable, and further because there was much more land for sale for taxes than parties to buy. Prior to 1865 there was several thousand acres of delinquent-tax land for sale in nearly every county in the State; I mean more particularly the western part of the State with which I am more familiar. This applied to Cass as well as other counties.

(The foregoing answer objected to for same reason, and because heresay, and not competent evidence, and is argumentative.)

Int. 8. State whether there were bidders enough at the sale of lands for delinquent taxes previous to & including the sales of 1864 in Cass Co. & other counties to take all the lands delinquent for the taxes thereon & offered for sale.

565 (Objected to by complainant for same reasons as to last interrogatory.)

Ans. There was not.

Int. 9. State if you know what certificates of tax-sales or matured tax-titles for which deeds had been given on wild lands in Cass Co. or in the western portion of the State of Iowa, were worth at the date of the sales of the lands in controversy to D. Reynolds & O. Meads.

(Objected to by complainant because immaterial, incompetent, & irrelevant.)

Ans. I do not know what was the value of lands on which deeds had been given at that time, for then very few had been given; but tax-certificates were not worth at that time more than they cost, that is the amount of money which had been paid for them at the sale, and the amount paid for subsequent taxes, for the reason that any one could buy all the lands he wanted, and get certificates direct from the county

566 treasurer for the amount of taxes due on the land, as the sales for tax by the dif'erent county treasurers were open & adjourned from time to time, so that a person could buy almost any time.

(Answer objected to for same reason as to question.)

Int. 10. State whether certificates of sales of fractional pieces of wild land in Cass Co., or matured tax-titles on fractional pieces of wild land at that time, Jany., 1864, were or would have been worth the delinquent-tax penalty, interest, & costs upon the whole pieces.

(Same objection by complainant as to last question.)

Int. 11. State your means of knowing the extent of the demand for purchase at tax-sale compared with the amount of land for sale for taxes in said county of Cass and other counties in the western part of Iowa at the date of said sales & of the value of certificates of tax-
567 sales and lands on which tax-deeds had been given in said county, and of knowing whether certificates or tax-deeds for fractional pieces were or would then have been worth the tax-penalty, interest, & costs on the whole piece.

(Objected to by complainant because immaterial & irrelevant.)

Ans. My means of knowing is from dealing some in tax-certificates & tax-deeds since 1863, and from conversation with other parties who dealt in them, and others about buying them, and the general aversion of people to buying fraction pieces.

(Same objection to ans. as to question.)

Int. 12. State what notice you had, if any, before purchasing said lands, of any fraud in the states thereof for taxes to said D. Reynolds & O. Meads.

Ans. Not any.

568 Int. 13. State whether at any time thereafter you had any notice of any fraud or illegality in said sales; if so, state when & state specifically what that notice was, by whom it was given, & whether you made any inquiry in consequence thereof.

(Complainant objects to the witness stating under the interrogatory and conversation had between himself and other parties as being immaterial, hearsay, and incompetent.)

Ans. Some time in 1870 or '71 I first heard of some statements that said tax-sale was illegal or fraudulent from some attorneys for the parties owning the original title, & perhapse from others. I don't remember who. Said attorneys were Alfred Sulley & J. T. Hanna, attorneys now or formerly of the plaintiff in this case, who stated that they thought that said tax-sale was illegal or fraudulent, they stating that such belief was founded on the alleged statement that John Warford was not
569 personally present at said tax-sale on the 4th of Jany., 1864, and did not in person bid in said land; they also admitted & stated that neither of them know anything about it themselves, as neither of them was present at the sale, but they based their conclusions of fraud or illegality from the alleged statement that said Warford did not come to the said tax-sale in Cass Co. until a week or two after the fourth of Jany., 1864. They all, who pretended that the sale was illegal or fraudulent, of which I now remember, admitted and stated that Warford did attend said tax-sale a week or two after the 4th of Jany., 1864, but they said he was not there on the 4th, & they claimed that Warford had made out a list of the land or marked the land in the printed advertisement that he wished to buy prior to the 4th of Jany., 1864, & wrote a letter to the treasurer that he would buy said land so marked,
570 part in the name of O. Meads, & that under such written bid or offer the treasurer sold or struck off said land to said D. Reynolds & O. Meads, respectively, without crying off each piece separately, a week or so before Warford got there. This is the substance of all I ever heard from which they assumed or stated that said tax-sale was illegal or fraudulent by any act of Warford or the treasurer. In reply to such

statements, the allegations they made & conclusions they drew from them, I told them such statements were not true; but even if the facts were as they state, it would not make the sale illegal or fraudulent, for it was immaterial whether the sale actually took place on the 4th of Jany., 1864, or a week or two after, for the deed would be conclusive as to the time of sale, and that I thought a party had a right to make a bid or offer to buy land in writing & by letter at a public sale, and that a sale, pursuant to such written offer or bid, was as binding &
571 legal as if made in person. Then, after I had such intimation that Warford was not personally present at said sale on the 4th of Jany., 1864, I soon after stated what I had heard to said Warford & to Isaac Dickerson, who was the county treasurer of Cass Co. at the date said sale was made, and enquired of each of them particularly whether or not Warford was personally present and bid in said land in person at said sale, and they both stated to me positively that the statement of Hanna & Sully & others were false, & that Warford was personally present & bid off said land in person on the 4th of Jany., 1864, and they said they thought that Sully, Hanna, & others got a wrong impression, from the fact that Warford had written to Dickerson, the Co. treasurer, some time before the sale for copies of the advertisement and printed list of the land for sale, & the further fact which Warford stated to me that
572 some parties in Cass Co. had written to him to know what day he was then at the tax-sale, and that he had written back that he did not remember without referring to the records, but was of the impression that it was about the middle of Jany.; but Warford said that after he had examined the records & some memorandum he was satisfied he was mistaken in stating that he did not get there until the middle of January, for he was, in fact, there at the time the records show the sale, & that they thought that such erronious impression arose from his mistake in his letter; that his letter was written without reflection & without examination. And, further, said Dickerson & said Warford assured me that said lands were read off by the treasurer at said tax-sale on the 4th of Jany., 1864, at the court-house in Cass Co.,
573 openly & publicly offering them for sale, & that said Warford had a list, and when the treasurer came to the pieces that he desired to purchase he stated the fact that he would take them for the amount of tax-, penalty, interest, & costs, & checked them on the list, as they went along; and that part of the time parties were out & in while said sale was going on, and that it was well known in the town of Lewis, which was then the county-seat of Cass Co., that said sale was going on and where said sale was held, and that everything connected with said sale was conducted openly & publicly; and, further, some time after such conversation, and about the month of March, 1872, they each testified to the same thing in a suit by Everett against me and others, in my presence. I also examined the records of tax-sale in that co., & found that the records of sale and all the records showed the sale
574 to have taken place on the 4th of Jan'y, 1864.

(The foregoing answer objected to by the complainant because, 1st, argumentative; 2nd, hearsay; 3rd, immaterial; 4th, incompetent.)

Int. 14. State fully the extent of the inquiry you made and the result thereof in respect to said notice.

(Complainant makes the same objection under and to this interrogatory as entered to the last question.)

Ans. This question, in part, is answered in the preceeding answer, to which I refer, and in addition will state that I have had several different conversations with said treasurer, Dickerson, & said Warford when I

saw them here in Des Moines, or when I happened to be where they lived, and they always told me the same thing as stated in my former answer; and they further said there was no question about the good faith, fairness, & publicity of said tax-sale on Jany. 4, 1864;
575 that everything was done to make the sale fairly & publicly that they knew how to do; that neither of them had any interest to make it otherwise, but both had every reason to make it good. Warford stated that Reynolds was a very particular man, & wrote him to be careful & see that the sale was made properly and according to law. He also stated that he had never had any correspondence with O. Meads, & never saw either Reynolds or Meads; that Reynolds furnished him all the money, & that the land he bought in the name *in the name* of O. Meads was so purchased by the directions of Reynolds; that all he did in relation to all purchase was done by the sole direction of Reynolds. The statements in this answer & the preceeding answer concerning my conversations & inquiries with said Warford & with said Dickerson, former county treasurer, occurred from time to time, commencing in the year 1867, until within six months or a year ago;
576 that during 1868 & '69 they occurred a half a dozen times.

(Complainant objects to this answer for the same reasons as to the last preceeding answer.)

Int. 15. State what information you received as to the real bidders or persons interested as purchasers at sale of Cass County in Jany., 1864; when & from whom you received it.

(Objected to by complainant because it calls for hearsay evidence, and incompetent, immaterial, and irrelevant.)

Ans. During the conversation between myself and Dexter Reynolds & O. Meads in regard to purchasing the tax-land of said Reynolds, & which resulted in the purchase of them on the first of Feby., 1868, both D. Reynolds & O. Meads were present in the same office, and they both told me that Mr. O. Meads had no interest in the tax-title that was purchased & stood in his name in Cass Co., nor the other
577 counties that I then bought, and that he never had any interest in them; that all such land always did belong to said Reynolds; that the money to buy them was advanced by said Reynolds; that Reynolds used Meads' name in the matter by Meads' consent, but for Reynolds' own benefit. I asked them why it was that Reynolds purchased land in Meads' name, and they told me, or Reynolds certainly did, that in 1861 he got some money of a party of whom he was trustee, and also got some money for him that he collected in 1862 & 1863, & that he, Reynolds, wanted to make more than 7 per cent. out of it, and accordingly he invested it in the purchase of tax-lands in Iowa, & in order to keep his individual funds, which he invested in his own name, seperate from the trust-funds, he used O. Meads' name for that purpose by the consent of O. Meads, and that O. Meads had no interest in said land & never had anything to do with them, and O. Meads said
578 the same thing in substance at the time of my purchase, & I never had any correspondence or arrangement with O. Meads about the land. Reynolds agreed and always did furnish me deeds executed by O. Meads of the lands standing in O. Meads' name to myself or any party I desired as he agreed to. Meads never claimed to have anything to do with the lands, but simply to execute deeds whenever Reynolds wished him to, as they always belonged to said Reynolds, he having advanced the money to purchase them.

(The answer objected to by complt. because hearsay, incompetent, immaterial, & irrelevant.)

Int. 16. State if you know, and your means of knowing, the value of wild lands in Cass Co., & in other western counties in Iowa, as compared with the amount of taxes on the land, and the relative value of tax-title land compared with original title.

579 (Objected to by complainant because immaterial, incompetent, irrelevant.)

Ans. In 1864, '5, & '6 I will state some of said land was worth perhaps twice or three times more than the taxes, depending upon the number of years the taxes were delinquent & the location of said lands; but a good deal of said wild land in Cass Co. at that time, on which the taxes were delinquent since 1858 or 1859, was not worth much if any more than the taxes; that if the land on an original title was worth a dollar an acre, and a tax-title which had cost about fifty cents an acre, the fifty cents an acre would be all said land was worth; or if the original would be worth two dollars an acre and a tax-title on it that cost a dollar an acre, the tax of a dollar an acre would be all the land would be worth, though it would be worth two dollars an acre on an original title. I mean to state that the land

580 on a tax-title will not sell for as much as if it was an original title. I state this from considerable knowledge & experience from dealing in tax & original titles in Cass & other counties.

(This answer objected to for same reason as to question, and because argumentative and gives conclusions of witness.)

Int. 17. How near was there a railroad to Cass Co. in 1864?

(Objected to as immaterial.)

Ans. Not within a hundred miles.

Int. 18. Were you examined as a witness in case of Oliver Everett against Dexter Reynolds & Callanan in the circuit court of Cass Co., Iowa, and did you say, in your evidence in that case, that you were to look after their (Meads' & Reynolds') lands, pay the taxes on same, and have all you could make by selling said lands, over and above interest, penalty, & costs, & a certain sum per forty ?

581 Ans. Yes; I was examined as a witness in said cause, but I did not state that I was to look after the lands of Meads & Reynolds, or pay any taxes for them, but I did state that I had bought the land of them, and agreed to pay them all the tax, penalty, & interest, & a little bonus to cover the expense & trouble, & that the taxes that I paid on it was for myself.

Int. 19. Are you acquainted with James H. Brown, of Atlantic, Cass Co., Iowa?

Ans. Yes.

Int. 20. Did you have a conversation with him in relation to your interest in these lands at the time of the trial of the case of Oliver Everett agt. Dexter Reynolds & you, at Atlantic, Cass Co., Iowa?

Ans. I am not certain that I did, but may have had. I testi-

582 fied at that time, & think he was present, & I may have had some conversation with him relative to my interest in these lands at that time.

Int. 21. If you had a conversation with him at that time, did you say to him that all the interest you had in the lands was the surplus you might realize from the lands after paying Meads & Reynolds the taxes, penalty, interest, & costs, & a bonus?

Ans. I don't remember just what I did say; but I know that if I did say anything to him at that time, I stated that I had bought the land for the amount of the taxes, penalty, & interest, & a little bonus to cover

the expense & trouble on each forty; & if I made anything on it after that, of course it would be mine.

Int. 21*. State what you said in the evidence given by you in the case of Oliver Everett against Dexter Reynolds & you, & about
583 which A. S. Churchill testifies in his deposition taken in this case.

Ans. I stated in substance what Mr. Churchill testifies to, & also Mr. Brown, except so far as it may be inferred from their testimony that I stated that I had not bought the land. I did state that I had bought the land; & the amount I had agreed to pay was the amount of tax, penalty, & interest, and a little bonus to cover costs and expense on each forty.

Int. 22. Where is O. Meads; &, if absent from home, how long has he been absent?

Ans. He is in Europe, & has been several months. His residence is Albany when at home.

Being unable to complete the taking of these depositions for want of time, I adjourn the further taking of them until to-morrow morning, at 9 o'clock a. m., then to be continued at the same place.

584 In pursuance of the above adjournment, on the 4th day of October I continued the taking of said depositions, as follows:

On cross-examination the witness testified as follows:

Int. 1. *Was* you present at the tax-sale in Cass Co., in Jany., 1864?

Ans. No.

Int. 2. Were you present at any tax-sale held in that co. prior to that time?

Ans. No.

Int. 3. *Was* you present at any tax-sale in that co. during the years 1864 or 1865?

Ans. No.

Int. 4. Have you ever attended any tax-sales in any of the counties prior to 1864, in the western part of the State; if so, in what counties?

Ans. No; except the county of Polk.

585 Int. 5. Did you ever have any business relation with Dexter Reynolds prior to Jany., 1864?

Ans. Yes.

Int. 6. In what?

Ans. I can hardly state of what, for I lived in the city of Albany where he lived, & we had some business relations of various kinds as lawyers and as dealers in real estate; have bought land of him & sold him land.

Int. 7. Were you engaged in the practice of the law in Albany, & were you in partnership with him?

Ans. I have been engaged in the practice of law there, but never in partnership with him.

Int. 8. Were you ever in partnership with him in any business, or jointly interested with him in any investments in money or in business?

Ans. Never in any manner.

586 Int. 9. When did you remove to the State of Iowa?

Ans. In the spring of 1863.

Int. 10. Did you act for Reynolds, after the spring of 1863, in any of his opperations in Iowa, or in looking after his lands or tax-titles or payment of taxes?

Ans. I did not.

Int. 11. When was the first dealing you had with him in relation to tax-titles in Iowa?

Ans. In 1863 or 1864.

Int. 12. What was that, & where did the land lie?

Ans. It was buying some land of him in the county of Polk.

Int. 13. Do you know of your own knowledge, and independent of what Reynolds or any one else may have told you, where Rey-
587 nolds got his money that he invested in the purchase of the lands in controversy at the tax-sale?

Ans. I only know that his father was a wealthy man & died some time before that & left him quite a fortune; how much I do not know.

Int. 14. Did Reynolds or Meads have any of your money or owe you anything in Jan'y, 1864?

A. No, sir.

Int. 15. When was the first contract or agreement you had with Dexter Reynolds in relation to his tax-titles & those of Meads in Cass Co., whether to sell for them or purchase?

Ans. On the first of Feb'y, 1868.

Int. 16. Prior to that time had you ever sold, or offered to sell, any of their tax-titles or tax-lands in Cass Co.?

Ans. I had not.

588 Int. 17. Was the contract between yourself & Dexter Reynolds, Feb'y 1st, 1868, in writing?

Ans. Yes.

Int. 18. Will you produce a copy of the same and append a copy to your answer to this question?

Ans. Yes; but the copy of the contract which I have in my possession has not appended to it a list of the lands by descriptions; but this contract was made in relation to the lands in controversy and other lands, & I append a copy marked "Exhibit A."

Int. 19. How much money did you pay at the execution of this contract?

Ans. Say, about two thousand dollars.

Int. When did you pay the next, & how much?

Ans. I cannot say when I next paid or how much; but I will
589 state that during the first year I paid some eight to ten thousand dollars, to the best of my memory, without having any records or evidence before me.

Int. 21. How much in 1869?

Ans. I think from 12 to 15 thousand dollars.

Int. 22. Can't you give more accurately the dates and amounts of payments?

Ans. Not from my memory.

Int. 23. How much did you pay in 1870?

Ans. Say, not much, perhaps a couple thousand dollars; but the whole contract was paid up into about four thousand at the time of the bringing of this suit, & in Jan'y, 1873, it was all paid up but about 1,600; in Jan'y, 1873, when I paid said balance, & took my deeds for the land that had not been deeded before.

590 In. 24. You had not obtained your deeds for the land in controversy at the bringing of this suit, had you?

Ans. They were not filled out for these lands then, but I state I was entitled to them & had made such large payments on the contract in advance of the terms of it, & Reynolds desired me to fill up deeds to myself which he furnished me prior to the commencement of this suit to any & all lands that I had any intimation of that there would be a suits about, for the reason that he preferred not to have himself or O. Meads sued, stating that as it was my land, if there was any lawsuits

he preferred to have me take the deeds for them & have the suits brought against me, & not against them.

(All of this answer objected to by complainant as not responsive to the question and immaterial & irrelevant & hearsay.)

591 Int. 25. Were the deeds signed & acknowledged by Reynolds & Meads at the date they purport to be signed; &, if not, why not?

Ans. They were.

Int. 26. Were they filled up at that date, or at a subsequent date; &, if at a subsequent time, by whom filled up?

Ans. Some were filled up at their date, but mostly filled up after by me by direction & authority of Reynolds.

Int. 27. Have you those deeds for the land in controversy in your possession?

Ans. I have them at my house.

Int. 28. Will you produce said deeds on the hearing of this cause to be used in evidence?

Ans. Yes, sir. When I was in Albany, in July & Aug. 1872, I spoke to Reynolds about having some other deeds furnished to me with
592 large spaces in them so that I could put in several hundred or thousand acres in them if I chose, & also such deeds for O. Meads to execute of a similar character, but Mr. Meads had heard, in some way, that he might be liable on an implied warranty contained in the words "*still*, grant, & convey," & he didn't wish to execute such deeds then, till he could be satisfied that he was not liable on an implied covenant or warrantee, & he wanted time to enquire about the matter, & he being away, absent from the city, & sickness, prevented him from executing the deeds until Dec. following, Reynolds being willing to execute them then, so that in Dec. following they executed & sent them to me. O. Meads stating further the reason why he wanted to be certain that there was no liability on his part by executing the deeds was because he never had a shad*d*ow of interest in the lands; that he done it to accom'odate Reynolds, & therefore did not want any shad*d*ow
593 of liability on his part, for he did not know then but what the old com'on-law rule prevailed in this State as to liability on implied covenants from the use of those or similar words, I assuring him at the time that he would not be liable; & but for Meads' hesitancy in the matter I would then have taken deeds for this land.

(All of the foregoing answer after the words "yes, sir" objected to, because not called for by the question, irrelevant, immaterial, and incompetent, and the statements of Reynolds & O. Meads are hearsay.)

Int. 29. In your answer to the 3rd direct interrogatory, you say Dexter Reynolds being the owner of all the land that stood in the name of Meads as well as in his own name, he having furnished the money by which they were purchased at tax-sale. Have you any other knowledge of the facts so stated except that derived from the state-
594 ments of Reynolds & Meads to you? I do not call for their statements, but for the simple facts enquired about.

Ans. No. I only know it from their statements.

Int. 30. You say in answer to 8th int., in substance, that there was not bidders enough at the sale of tax-lands in Cass Co., in 1864, offered for the delinquent taxes. How do you know that fact if you was not there and did not know who was there, who the bidders were, nor the amount of money each had? I do not call for the declarations or statements of any one made to you.

Ans. I only know it from examining the records of the sales of that co., which shows that the land was not all sold at that sale that was

delinquent & advertised, & from the statements of the then treas. of Cass Co., & the treasurer succeeding him.

595 Int. 31. You say in answer to question 17, in substance, that there was no railroad in 1864 within a hundred miles of Cass Co. What do you mean by that answer; do you mean roads operated, or being constructed?

Ans. I mean both.

Int. 32. Have you the tax-receipts for taxes paid on the lands in controversy mentioned in your answer to the 6th question?

Ans. I have or have had them.

Int. 33. Will you produce such receipts for examination on the trial of this cause?

Ans. I will, if I can find them all.

Redirect examination:

Int. 1. State why, and by what authority, a greater number than one hundred & sixty acres is contained in the deeds to you for the
596 lands in controversy.

(Objected to by complainant, because it calls for declaration and conversations between defendants after the bringing of the suit, and for hearsay evidence, the same is incompetent, immaterial.)

When I was in Albany, in July & August, 1872, I spoke to Reynolds about having some other deeds furnished with larger spaces in them, so that I could put in several hundred or thousand acres in them if I chose, & also such deeds for O. Meads to execute of a similar character; but Mr. Meads had heard, in some way, that he might be liable on an implied warranty contained in the words "sell, grant, & convey," and he did not wish to execute such deeds then, until he could be satisfied that he was not liable on an implied covenant or warranty, & he wanted time to enquire about the matter, & he being absent from the city &
597 sickness prevented him from executing the deeds until December following, they executed & sent them to me.

O. Meads stating further the reason why he wanted to be certain that there was no liability on his part by executing the deeds was because he never had a shadow of interest in the lands; that he done it to accom'odate Reynolds, & therefore did want any shadow of liability on his part, for he did not then but what the old com'on-law rule prevailed in this State as to the liability on implied covenants from the use of those or similar words, I assuring him at the time that he would not be liable; & but for Meads' hesitancy in the matter I would then have taken deeds for this land.

(The answer objected to for same reasons as to question.)

J. CALLANAN.

598 STATE OF IOWA,
Polk County, ss:

I, C. P. Holmes, do hereby certify that in pursuance of the annexed notice, & of a commission to me directed from the office of the clerk of the circuit court of the United States for the district of Iowa, to me directed, I caused to come before me at the times and place herein named James Callanan, who was then and there by me sworn and examined, & his examination was by me reduced *reduced* to writing, and after being by me read over to him, the said witness, was by him subscribed in my presence, and sworn to before me, and his said deposition is herewith returned. & I further certify that J. R. Barcroft, esq., was present and conducted said examination on the part of the defend-

ants, & that Wm. Phelps was present & conducted said examination on the part of the plaintiff; and I do further certify that the paper
599 hereto attached, marked "Exhibit A," is the same paper referred to by the witness in his answer to the 18th cross-inter'ogatory.

Given under my hand this 4th day of October, 1873, at Des Moines, Iowa.

C. P. HOLMES,
Commissioner.

Com'issioner's fees, $10.00, paid by defendants.

600 EXHIBIT A.

Agreement made at the city of Albany and State of New York, this first day of February, 1868, by & between Dexter Reynolds, of said city, and James Callanan, jr., of Des Moines, Iowa. The said Reynolds hereby agrees to sell to said Callanan all the lands on the list hereto annexed, situated in Fremont, Mills, Pottawattomie, Harrison, Cass, & Adair Counties, in the State of Iowa, for the sum of thirty thousand eight hundred and seven dollars, two thousand dollars thereof, with interest at seven per cent., to be paid within thirty days, & the balance payable within five years, with interest semi-annually from this date at seven per cent. on the sums remaining from time to time unpaid, both principal and interest, to be payable at Albany, to said Reynolds, free from any expense for drafts, express, or otherwise; and the said Reynolds agrees from time to time, and on the terms hereafter stated, whenever requested by said Callanan, to convey the said lands by deeds of
601 conveyance, but without covenants of warranty, in which his wife shall join, to said Callanan, or to whom he may direct, except as to in Fremont, Mills, Cass, & Adair Counties, purchased in the name of O. Meads, but belonging to said Reynolds, and as to those he agrees, until a conveyance thereof is made to said Reynolds, to procure like deeds from said Meads; or any deed by said Reynolds or Meads of the lands on the list hereto annexed, the said Callanan shall pay at the rate of one dollar per acre, except those in Pottawattomie County, for which he shall pay one dollar and fifty cents per acre & ten cents per year per acre additional for all lands not deeded before February 1st, 1869, which sums, when received by said Reynolds, shall be credited semi-annually on the gross amount to be paid under this agreement. If such payments are more than sufficient to pay the interest, the balance
602 shall be deducted from the principal; if less than the interest, the deficiency in interest shall be paid at once by Callanan. And when all the principle hereby agreed to be paid on the purchase of said lands, with interest, shall be fully paid, within the said five years, the balance of said lands, if any, shall be conveyed to said Callanan, or to whom he may direct, free from any charges except for stamps and notary's fees. If any of the lands in said lists have been heretofore conveyed by said Reynolds or Meads, or have not been deeded to either of them, in the counties of Fremont & Harrison, the deeds for which have not yet all been received by said Reynolds, or in the county of Adair, the time for redemption whereof has not yet expired, on the discovery thereof within five years there shall be allowed as a payment on this agreement the sum set opposite said lands on the list hereto annexed, with thirty per cent. added, and interest at ten per cent. an-
603 num to February 1st, 1868, and thereafter interest at seven. The said Callanan, in consideration of one dollar to him paid by said Reynolds, agrees to purchase said lands and lots on the foregoing terms,

and to pay therefor the sum of two thousand dollars, with interest at seven per cent. per annum, within thirty days, and the balance, being the sum of twenty-eight thousand eight hundred & seven dollars, within five years from date, with interest semi-annually at the rate of seven per cent. per annum, less amount to be allowed for lots heretofore sold, or not deeded, or not heretofore deeded, as hereinbefore agreed. The said Callanan also agrees to pay all taxes on said lands, so as to keep the title of said Reynolds & Meads unimpa'red, or to buy the said lands in again at subsequent sales; if he so elect, such purchase to be in the name of Reynolds, Meads, or Hun, (Marcus T.,) and the said lots to be conveyed to such purchasers, but such purchase and conveyance
604 are to be deemed for the benefit of said Callanan under this agreement, and a reconveyance to be executed by such purchaser to said Callanan, or to whom he may direct, on his paying the cost of stamps & acknowledgment thereof, and the original price on which the same were to be conveyed, as herein provided, which deed the said Reynolds agrees to procure for said Callanan. The said Callanan is also at the time of demanding a deed or deeds of any of said lands to pay the fees of the notary public for acknowledgment, and necessary revenue-stamp thereon, and expense of sending them to said Callanan by mail or otherwise. If any of said lands have been sold for taxes, and said Callanan is notified of such fact, or if any shall be hereafter sold for taxes to any other purchaser than said Reynolds, Mead, or Hun, the said Callanan shall redeem the same or procure an assignment of the certificate of such purchase to said Reynolds, Mead, or *or* Hun
605 before the time of redemption shall expire. The said Reynolds also agrees to furnish said Callanan, if demanded by him, with four deeds, duly executed & acknowledged, on his paying the stamps and notary's fees thereon, which the said Callanan is authorized to fill up to the extent of one hundred and sixty acres in each deed, and to supply him therewith from time to time; the said Callanan, as he fills up said deed, to notify said Reynolds of the lands inserted in each, and to pay said Reynolds the price per acre heretofore agreed upon as in executing a deed; and in case of the loss of any of said deeds and then filling up by others, the said Callanan shall be responsible to the said Reynolds for the same sum he had herein agreed to pay per acre in executing deed under this agreement, according as said deeds shall be filled up. The receipts for taxes paid on said lands by said Callanan, the certificates of redemption when a lot has
606 been to others than said Mead, Reynolds, or Hun, or shall be, and the certificates of purchase to be sent by said Callanan to said Reynolds, that he may see the same are paid and the amount thereof, which are to be returned to said Callanan when demanded. The expense of all deeds by county treasurers to said Reynolds, Meads, or Hun, not now paid by said Reynolds and included in the cost of said lands sold said Callanan, are to be paid by said Callanan. In case of the failure of said Callanan to pay the sums herein agreed or provided to be paid at the time herein specified, or within three months thereafter, (except the first two payments of interest, which are to be paid when due,) or to perform any of the agreements or covenants herein on his part agreed to be performed, the rights of said Callanan thereafter under this agreement shall cease, & the said Reynolds may thereafter sell and convey the residue of said lands then remaining
607 for his own benefit, the same as if this agreement had never been made.

In witness whereof the parties hereto have set their hand & seal the day and year first above written.

DEXTER REYNOLDS.
JAMES CALLANAN, JR.

[Copy.]

Dexter Reynolds to J. Callanan. Copy agreement.

There follows a list of the land in Cass Co., including the land in question.

(Endorsed:) Filed Oct. 15, 1873. George B. Corkhill, clerk.

608 In circuit court United States, district of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN ET AL. } In equity.

The following deposition of Isaac Dickerson, esq., is taken by agreement of parties before D. F. Callender, a notary public, and it is agreed that the same shall be used and read in evidence on the hearing of the above cause, in like manner as if taken regularly in the manner prescribed by the rules and practice of said court.

Des Moines, Ia., May 6th, 1874.

609 ISAAC DICKERSON, lawful age, being first duly sworn, depose' as follows:

Int. 1. Mr. Dickerson, were you the treasurer of Cass County, Iowa, in 1864, and has your deposition been heretofore taken in this case?

Ans. I was, and my deposition has heretofore been taken therein.

Int. 2. State whether or not the land' marked on the sale-book of Cass County as being sold on the 4th of January, 1864, were all actually struck off and sold by you on that day to the different parties.

Ans. They were not all sold on that day.

Int. 3. When were they all sold that are marked as being sold on the 4th of January?

610 Ans. Some of them were sold on the 4th of January, 1864, and the rest from day to day thereafter for two or three weeks.

Int. 4. When was the sale of January, 1864, adjourned?

Ans. I could not say positively; two or three weeks after the first of January; not longer than three weeks.

Int. 5. How was it managed? What was done from the day you commenced the sale until it was adjourned?

Ans. It was managed by publicly offering the lands and marking up the lands on the tax-list when it was bid off.

Int. 6. State what did you say or do at the close of the sales or work of each day.

Ans. I gave notice to the bidders that the sale would be con-
611 tinued right along the next day.

Int. 7. You state that sale continued from two to three weeks before you finished and adjourned it. State, if you can, till what time you adjourned.

Ans. I don't remember positively to what time it was adjourned; but not longer than two months.

Int. 8. State, if you can, why did you date all of the sales that you made during that two or three weeks on your sale-record as being made on the 4th of January, 1864.

Ans. From the fact that the sale was commenced on the 4th day of

January I considered it right and proper to carry the sales all under that date, as the sale was commenced then. If I had dated them any different it would have showed a different sale. That had always
612 been my custom at the general sale—to enter up all of the lands at the date the sale was set for, until the date of the next regular adjournment.

Int. 9. State how you regarded the sales that were made before final adjournment. Did you regard them as all one sale or different sales?

Ans. The sale was advertised to take place on a certain day. I regarded all that was sold at that sale as one sale, although it might continue from day to day for a number of days.

Int. 10. State, if you remember, how your other sales, say for the fall of 1862, 1864, and 1865, were made and entered on your sale-book. I mean to ask whether they were all made on one day and entered on the sale-book the same day or not.

613 Ans. I don't remember positively, but I don't think they were all made and entered on the sale-book on one day, but they were all carried out under one date; that is, the date the sale was advertised to take place on, whether it was continued one day or more. My understanding is it was right and proper to enter up lands under the date of the time the sale commenced where it continues from day to day, whether it continued one or three or four days; and, as far as I remember, that was the custom of the office.

Int. 11. Can you state whether or not John Warford was present at that sale and bid in land at that sale in the name of D. Reynolds and of O. Mead?

Ans. John Warford was present at that sale of Jan., 1864, and
614 bid in lands for D. Reynolds and O. Mead.

Int. 12. State, if you know, when he was there; what day, as near as you can state.

Ans. I could not state positively what day he was there, but he was there, according to my recollection, a couple of days during that sale, and it was probably several days after the commencement of the sale, but I only now remember positively that he was there and bid in lands for D. Reynolds and O. Meads during that sale.

Int. 13. Have you examined the records of the sale to see who was present and bid in lands at that sale? And see if the records can aid your memory in any way in fixing the date when he or any other bidders were there.

Ans. I have examined the records at various times, and find
615 that John Keyes, L. H. Whitney, George Cotton, and others were there; and remember of those parties being there at the fore part of the sale; and from my recollection and indication of the records I would suppose that Warford was not there until several days after the sale was commenced.

Int. 14. State whether or not Thomas Meredith was at that sale.

Ans. The records do not show that he was at that sale; I would suppose that he was not, as he is always a bidder when he attends tax-sales.

Cross-examination:

Int. 1. Have you examined the records of the treasurer's office of Cass County since the month of April, 1873, with a view to giving your
616 evidence in this case; and if so, when and at whose request?

Ans. I have examined the records of sales to some extent in the past two months, partly in reference to giving in my deposition in this case and partly in reference to other cases. I don't now remember

that any one in particular requested me to examine the records. I did it at my own option and for my own satisfaction, for the purpose of refreshing my memory.

Int. 2. Did you have any communication with the defendant Callanan upon this subject, or in regard to your present deposition?

Ans. Mr. Callanan informed me, some month or so ago probably, that the parties wished to take my deposition before court, and wanted to know when it would be most convenient for me to attend. When in town some two or three weeks ago I saw Mr. Callanan,
617 and he then told me that he wished to take my deposition; that there were some points on which he wished to ask questions that were not filed in my other deposition, but I don't think that he indicated particularly the points on which he wished to question me.

Int. 3. Did he indicate the points in any manner—particularly or not particularly; and, if so, what points?

Ans. I said to him that my deposition, I thought, had been pretty fully taken in that case, and I coulden't think of anything that had been left out particularly. He said that he wished to ask me questions in regard to more fully how the sale had been conducted, and who was present, and that he wanted to more fully get at the facts of the matter.

618 Int. 4. Have you now stated in full all of the conversation had between you and Mr. Callanan upon the subject inquired about in the last question?

Ans. I have fully stated the substance of the conversations.

Int. 5. Since that conversation, have you examined the treasurer's books?

Ans. I have, to some extent.

Int. 6. State what fact or facts your recollection has been refreshed upon by such examination of the treasurer's books which you did not know before such examination of such books and at the time of giving your former deposition in this case.

Ans. I have only examined the record of sales. I don't know that my memory has been particularly refreshed on any points; I may
619 have a more distinct recollection of who was present and about the time that they were present.

Int. 7. In whose handwriting did you discover the entries in the sale-book to be made in?

Ans. In the handwriting of E. W. Davenport.

Int. 8. In your answer to 3rd cross-question you say you told Callanan that you coulden't think of anything that had been left out in your former deposition. Do you now think of anything that was left out in your former depostion that you have testified to to-day; and, if so, what is it?

Ans. I meant that I thought that I had been fully examined and coulden't think of what further points they wished to examine me on. I can't remember now what my former deposition was in full, but
620 I don't suppose there have been any questions asked me to-day that I could not have answered at the time of giving my former deposition; coulden't tell what might be left out until I was asked the questions.

Int. 9. Your former depositions in this case were taken in Cass County seat, were they not?

Ans. They were.

Int. 10. At what distance from the treasurer's office, where the records of sale were kept?

Ans. It was in building on the next lot.

Int. 11. Were the records of the treasurer's office accessible to you at the time of giving your former deposition?

Ans. They were.

621 Int. 12. Did you examine them during the giving of such evidence or immediately preceeding the giving of it?

Ans. I did not.

Int. 13. How many days were you in giving your former deposition next door to where these records were kept, and did you have regular adjournments as shown in said depositions?

Ans. I think it was part of two days, and I suppose there was regular adjournments as shown in the deposition.

Int. 14. Have you discovered anything in the records of Cass County since the giving of your former deposition or before which shows that the tax-sale of Jan. 4, 1864, continued more than one day; and, if so, state what it is and what record you discovered it, and when you

622 made the discovery?

Ans. The examination that I made was of the register of tax-sales; it shows that the parties who took small quantities, from one to twenty tracts, are entered up first in the register, and the commencement of the Meads and Reynolds sales are along several pages after the first entries, and it would be a natural conclusion to me that the first lands bid off by Meads and Reynolds was several days after the commencement of the sale; this fact was not pressed upon my mind at the time of giving my former depositions.

Int. 15. I don't ask you for natural conclusions, but for facts within your present recollection. Will you now answer my last question from your present remembrance of the truth? (Here last question was again read to the witness.—NOTARY.)

623 Ans. On the examination of the register of sales recently made I find that it would be impossible to make the sales in one day.

Int. 16. About how many sales could be made properly in a day?

Ans. Sales properly made and entered on the books, and the extensions made, I would think fifty sales would be a fair day's work.

Int. 17. Do you mean fifty tracts or parcels of land?

Int. 18. Did you conduct your sales in this manner when you had a tax-sale?

Ans. Yes. sir; as I now recollect.

Int. 19. Have you any present recollections on that subject, and is your recollection now better than it was when you gave your former deposition?

624 Ans. My present recollection is that as lands were sold I checked them off from the tax-list, and my clerk entered them upon the register. I can't say that my recollection is any better now on that point than it was when I gave in my former deposition. I don't recollect whether that question was asked me.

Int. 20. Are you now testifying with reference to the January sale, and on the 4th day of Jan., 1864?

Ans. I am now testifying with reference to the sale conducted under date of Jan. 4th, 1864.

Int. 21. In your former deposition this case you were asked this question: "How did you make the sale?" You answer, "In the usual manner of making tax-sales; in the first place, I opened the sale by

625 public outcry, on the 4th day of Jan., and the sale after that was conducted by my clerk entirely. I only signed the certificates. It was a very busy time of year, and I was engaged in taking in taxes."

Did you then swear to the truth as you recollected it; and, if so, how

has your recollection become changed upon this point of inquiry, and from what circumstances, or is said answer true?

Ans. I then swore to the truth according to my recollection. The answer is true. I, as treasurer, done what was legally required of me, as I understood it. I don't know of any particular circumstances that have changed my mind with reference to it. I know that I checked off on the tax-book.

Adjourned until 1½ o'clock this p. m.

Met pursuant to adjournment.

626 Witness further says:

I wish to make my last answer given before adjournment fuller.

My meaning is this, that I made the sales and signed the certificates, and my clerk entered them upon the register, and made out the certificates.

Int. 22. Are all the sales entered up under date Jan. 4th, 1864, in the records of that office?

Ans. All of the sales that were made at the January sale are entered up as of the date of Jan. 4th—all that I know of.

Int. 23. Are the Reynolds-Meads tracts entered up altogether on the records of that office, as being sold to them?

Ans. They are not.

627 Int. 24. How are they entered, and who else appears intermediate their entries, as purchasers at that sale?

Ans. I did not fully understand the previous question. I don't think there is any others intermediate to theirs; when theirs commence to be entered up they appear right along until all entered.

Int. 25. Are there any entries made of lands as being sold at that sale appearing of record after the entries of the lands to Reynolds and Meads?

Ans. There is one that I remember of, and I don't now remember of more than one, and that is Miles White.

Int. 26. The entries to W. B. Beebee appear before the Reynolds and Meads entries on the books, do they?

628 Ans. That is my recollection.

Int. 27. You acted as Beebee's agent, did you not, in making those purchases?

Ans. I was county treasurer at that time, and Beebee sent me money to put into tax-lands. Whether I was particularly his agent or not, I don't know how he considered it.

Int. 28. Did you invest this money for Beebee in tax-lands at the January sale in 1864, and how much did you invest for him?

Ans. I did, and the amount was somewhere from four to six hundred dollars; couldn't say positively as to the amount.

Int. 29. Did you not say in your former deposition that it was between five hundred and a thousand dollars?

629 Ans. I think likely I may have said so.

Int. 30. Did you bid for these lands for Beebe?

Ans. I considered that he had a bid in by letter.

Int. 31. How did you consider that?

Ans. He sent me money, and whatever the amount was he said he wanted to go in on Fox lands that was for sale for delinquent taxes.

Int. 32. Is that all the instructions he gave you reference to investing this money?

Ans. I don't remember particularly about other instructions at this time.

Int. 33. How did you make the selection of Beebe's land?

630 Ans. The land being publicly offered for sale and there being no other bidders, I entered it up to Beebe.

Int. 34. Did you not designate in some manner to the clerk and instruct him to mark up to Beebe these lands?

Ans. I think likely I checked it on the tax-list, and then had him enter it up on the registry of sales.

Int. 35. On what day of the month of January, 1864, did you mark up these lands to Beebe, and did you make these selections before or after the Reynolds and Meads selections were made, or during the time of making their selections?

631 Ans. I don't remember what day of the month they were entered up under date of Jan. 4th, 1864; it was probably a few days later than Jan. 4th. The selections were made and marked before Meads and Reynolds' agent attended the sale.

Int. 36. Did Beebe pay you for making these tax-purchases for him and investing this money?

Ans. He paid me for investing his money.

Int. 37. Were these lands that you purchased for Beebe offered to any other person, or were there any other persons in attendance at the time they were entered up to Beebe?

Ans. They was offered to any person generally that would pay the taxes on them. Whether there was any person present at the time they were entered up, I do not know remember.

632 Inst. 38. State whether these lands you say were purchased by Reynolds & Meads were not entered up in the same way the lands were for Beebe?

Ans. They were entered up in the same manner on the book, but they was called off at the time they were entered up, and they were publicly offered at the time.

Inst. 39. Did you have any talk or correspondence with this man John Warford with regard to the purchase of these lands at tax-sale, before the sale?

Ans. I had correspondence with him previous to the sale.

Int. 40. Where is that correspondence?

Ans. I don't know.

Int. 41. Have you it, or is it under your control; if not, why not?

633 Ans. I have not got it; it is not under my control. The reason is, that when I was county treasurer I received a great many letters which I didn't consider of any importance, and they were put into an old sack and put in a box, and lay there for a number of years. Some two or three years ago these letters were called for, and I made a thourough search for them, and found these letters in the box, perfectly riddled by the mice, and I have every reason to believe that the Warford letters were among those letters so destroyed.

Int. 42. Were not all of these lands purchased by Meads and Reynolds at this tax-sale marked off to them according to instructions previously given by John Warford?

634 Ans. No, sir. I had no instructions from Warford, only in regard to how he wished the certificates made out and delivered.

Int. 43. The same question last asked you was asked you upon a former examination as a witness, to which you made answer as follows: "I don't remember; the details in regard to the sale I don't remember." Now state what has refreshed your recollections on this point since giving that answer, and how it comes that you now remember the facts stated in your last answer.

Ans. I don't know that my memory has been particularly refreshed on that point. I didn't then, nor don't now, remember all the details connected with that sale; but there are certain things connected with that sale that I might now remember that I did not then. My
635 deposition has been taken several times with reference to that sale since. The particular reasons that I remember the facts as stated in the last answer is, that Warford paid a part of the purchase while he was there, and it was arranged that he would pay the balance when the certificates were made out and delivered.

Int. 44. In your former deposition you testified as follows: "At the commencement of the sale there was a sum of money paid—it might have been one or two thousand dollars or more—and on the final delivery of the certificates the balance of the money was paid, covering the total amount of the certificates; and in the intermediate time there might have been payments made, and on the final delivery the balance was paid." Having so stated then, how does the same circumstance recited in your last *question* aid your memory now, and were the foregoing facts as stated by you true?

636 Ans. I don't know that the circumstances aids my memory any, as in both answers it is one and the same circumstance referred to, and my answer is true, to the best of my memory.

Int. 45. At the time these lands was being marked off to Reynolds and Meads, who was present?

Ans. John Warford.

Int. 46. Is it not a fact that you met John Warford at the hotel on the morning of his arrival at Lewis, in January, 1864?

Ans. I think it is likely that I did.

Int. 47. By what arrangement and for what purpose?

Ans. I don't recollect of any particular arrangement. He advised me by letter about what time he would be there to attend the tax-
637 sale. As I had never met him, it was only an act of courtesy if I went to the hotel to meet him.

Int. 48. Did you compare lists or make any selections at the hotel that morning?

Ans. No, sir.

Int. 49. How did parties make known their bids at this sale? Was it not by handing in slips of paper with the lists of lands they wanted, or designating the clerk such lands as they wanted, by the books or advertisements?

Ans. The usual manner of making of the bids was by saying that they would take the land and pay the taxes when it was offered. I think, perhaps, there were one or two parties who wanted particular prices handed in their bids on slips of paper, and when we come to it on the book their bid was received in that shape.

638 Int. 50. In answer to the same question in your former deposition in this case you say: "Some parties may have handed in slips of paper with lists of land; others designated to the clerk such lands as they wanted by the book or advertisement." Was that answer correct?

Ans. I think that the answer is correct. The clerk was acting under my instructions; some parties would bid from the advertisement in the paper, and others would bid from the book.

Int. 51. In your former deposition you were asked this question: "How did John Warford, agent for Meads and Reynolds, make known to your clerk or yourself his bids?" You answer, "It having been over nine years since that transaction took place, I cannot remember." Has

639 anything transpired since *since* giving that deposition to aid your memory on this point; and, if so, what, and was that true at the time of giving that answer?

Ans. I don't know that anything has transpired to aid my memory on that point. I knew that John Warford was there at that sale; bid in lands for Meads and Reynolds in the usual way. My answer to the former question is true.

Int. 52. You were asked in that deposition, "What do you remember in regard to the sale to said Meads and Reynolds?" You answer, "It being now over nine years ago, I don't remember much about it. The important points about it that I remember is, that I received a large sum of money and they got a large number of certificates. The
640 records will show about the sale generally. I don't think of anything more now." Was that answer true then, and is it true of your recollection now?

Ans. That answer was true then, and I may remember some more of the details now than then.

Int. 53. Do you, and, if so, what has refreshed your recollection on this point since the giving of that deposition?

Ans. From the fact that my deposition has been taken a number of times concerning that sale, and since giving that deposition, and I couldn't help but have it in my mind more than previously.

Int. 54. What deposition have you given since you gave your former deposition in this case in regard to these Reynolds and Meads purchases—in what cases and where given?

641 Ans. I don't think I have given any deposition since in regard to these Reynolds and Meads purchases, but I have given a number of depositions with reference to the sale of Jan. 4th, 1864, in other cases, cause of Oaks vs. Beebe, and two other cases against Beebe.

Int. 55. In your former deposition in this case you was asked if you could swear that this sale of Jan. 4th, 1864, continued more than one day. You answered this, "It having been over nine years ago, I would not swear to any definite recollection about it outside of the records." To-day you testify, in answer to the third direct question, some of them were sold on the fourth of Jan., 1864, and the rest from day to day thereafter for two or three weeks. You have further testified to-day that the records show all the sales to have been made on the
642 4th day of January, and none upon any other day. How does this happen that your recollection is now so extended when on your former deposition you had none outside the records?

Ans. It happens in this way: Previous to giving in that deposition I hadn't thought much about it; hadn't examined the records for the purpose of refreshing my memory. Since then I have examined the records, and find that there was quite a quantity of land bid in at the sale of Jan. 4th, 1864, previous to any bid in the name of Meads and Reynolds, and I further know that John Warford was there during the month of Jan., 1864, and bid in lands for Meads and Reynolds.

Int. 56. Is this all the explanation you have to make?

Ans. It is, as I understand the question.

643 Int. 57. In your former deposition you were asked to state what you did; what part you took in the conduct of this sale. You answer, "I was county treasurer, and whatever was necessary to be done or was done had to be done by my order. The particular things that were done outside of the record I can't now remember." Was that true then, and is it true now?

Ans. It was true then. Some things outside of the record I now

remember from the fact that I have studied over the matter a great deal, and remember some transactions that do not appear on the record.

Int. 58. In your former deposition you were asked this question: "Did you not, in the conducting said sale, first check off such lands for the delinquent taxes as was wanted for a few of the residents
644 and smaller bidders, and then select from the delinquent list such lands as you desired for Mr. Beebe, and then from the list check off for Meads & Reynolds until the amount of money they wished to invest was exhausted?" You answer, "I might or might not have done so, as such a long time has elapsed since the transaction I cannot remember details." Was that answer then true, and is it true now?

Ans. That answer was then true. I think now I remember more of the details than I did then.

Int. 59. From what source has your recollection been refreshed?

Ans. From studying over the matter, talking over the matter with parties who were at that sale, looking over the records. I am
645 satisfied that I remember details now that I would not when I gave in my former deposition.

Int 60. Who have you talked with, and where?

Ans. I have talked with William Wardell, who was clerk at the time, and I have talked with George Cotton, and have talked with Henry Temple, and I have talked with John Keyes, when he was alive; with Whitney. I don't know that I could think of any one else. Talked with them at various times within the last year.

Int. 61. In your former deposition you were asked this question: "State how the lands checked off to Meads and Reynolds were designated to yourself or your clerk. Give your best recollection of the transaction." You answer, "I cannot remember: I have no best recollection about it." Was that true, and is it true now?

646 Ans. That was true then. I more fully remember some transactions now than I did then.

Int. 62. In your former deposition you say "these lands might have been checked off from the newspaper or from the tax-book; I cannot say which." Was that true then, and is it true now?

Ans. It is.

Int. 63. In what paper did you publish the tax-list and notice of tax-sale for the year 1862 for Cass County?

Ans. My recollection is that I published it in a paper published at Lewis, and I think it was called Cass County Gazette.

Int. 65. Have you ever given any other deposition in regard to the purchase of Meads and Reynolds at the alleged tax-sale in 1864,
647 except the deposition you have given in this case; and, if so, in what cases?

Ans. I don't know that I have; I have given quite a number of depositions in regard to the tax-sale of Jan., 1864; but after a deposition is taken I have not charged my memory with who the parties were.

Int. 66. Examine the signature, Isaac Dickerson, attached to the deposition here now shown you and appended to this deposition by copy as Exhibit A, (here the original was shown to the witness, of which Exhibit A is copy. Notary,) and state in whose handwriting it is.

Ans. The words "Isaac Dickerson" is in my handwriting; it is attached to a deposition that was fraudulently obtained by one Sulley.

Int. 67. In whose handwriting is said deposition, and where
648 was it taken?

Ans. I cannot positively state in whose handwriting it is. My

signature was attached in the office of Sharp, in the town of Atlantic, Cass County, Iowa.

Int. 68. Where was that deposition written, and who was present?

Ans. The deposition was probably written in Sharp's office. This man Sulley was present, and H. T. Sharp; they were all of the persons present.

Int. 69. When was it written and your signature attached?

Ans. It purports to have been taken Sept. 19, 1871.

Int. 70. Was you sworn at the giving or signing of said deposition?

Ans. I don't recollect whether I was or not.

Int. 71. Did you not testify in this case in your former deposi-
649 tion given herein, when this same deposition was presented to you, as follows: "That deposition was sworn to, according to my recollection, and after Mr. Sulley, the party propounding the questions, had made a statement of his suppositions of what he supposed to be facts, and his calling to my recollection certain points in the transactions of these sales, he may have refreshed my memory. According to my recollection at that time there was no cross-examination and no one else present at the examination."

Ans. I think I did. I was sworn to a deposition in that office. I don't know whether this is the deposition or not.

Int. 72. Did you ever give but one deposition in that office in the case of John P. Campbell was plaintiff and H. A. H. Playter was defendant in the caption thereof?

650 Ans. I never gave but one deposition in that office. I don't now remember who the parties were. Sharp, the notary who took that deposition, told me afterwards that he was satisfied that there was some schulduggery about it.

(All of the foregoing answer after the word "Sharp" objected as uncompetent and not called for by the question by plaintiff.)

Int. 73. What say you, is that deposition the one you gave in that office? I want no haggling about it.

Ans. That is my signature, but I don't believe I ever answered those questions as they appear there.

Int. 74. Do you now mean to swear that you did not give that deposition and sign the same just as it is written, and that you did not
651 do the same under oath? I want an answer, yes or no.

Ans. I was sworn, and that is my signature on that paper, but it was never my intention to answer such interrogatories in that way.

Int. 75. Have you been thinking over that deposition since it was presented to you, or the taking of your former deposition in this case?

Ans. All the thoughts I have had about it was as a fraud perpetrated on me by a designing man.

Int. 76. On the taking of your former deposition in this case that deposition was presented to you and this question asked: "At the time this deposition was taken were not the facts connected with this transaction more fresh in your memory than now?" You answer, "I don't know." Was that answer true when given?

652 Ans. That answer was true when given, but on reflecting I would say not, from the fact Sulley came into my office when I was not thinking about it, and asked me to walk down to Sharp's office. I don't mean to say that it is not true, but on reflection I don't think that I had the matter in my mind as much then as I had afterwards.

Int. 77. Immediately following the last question in your former deposition you was asked, "Will you read your answers to interrogatories number 3, 5, 6, 7, & 9 in said deposition, and there state whether your recollection was not better at that time than it is now with regard

to those facts." You answer, "I will not read them." You are further asked, "Is the signature subscribed to those depositions your signature?" You answer, "I refuse to examine the signature." Again you say,
653 "I did not examine it, and shall not examine it." At the giving of those answers did you know what was in that deposition?

Ans. I don't know whether I did or not; I don't think I did; it was thoroughly impressed on my mind, as it is now, that the deposition was a fraud.

Int. 78. What do you mean by fraud as used with reference to that deposition?

Ans. I mean this: that this man Sulley had it all fixed up, and I believe that the affidavit and signature were attached to altogether a different deposition. I diden't so intend to answer such question.

Int. 79. Examine said deposition and state if it is not all in the same handwriting after the first interrogatory, and if it is not all in the hand of H. T. Sharp.

654 Ans. I think it is all in the same handwriting; I should say that it was in Sharp's handwriting; I mean that the fraud was perpetrated by Sulley.

Int. 80. Please explain how Sulley could practice a fraud on you in taking your deposition where it was all written by Sharp, the notary, who took it at the time.

Ans. He rushed the matter all on me in half an hour, diden't give me any time to consider, and he suggested the answers more himself, and from the general transactions of the matter I considered it a fraud.

Int. 81. Do you mean to be understood that in giving that deposition you testified from anybody's suggestion without knowing that you were swearing to the truth at the time, and do you give your evidence under oath in that way?

655 Ans. I aim always to swear to the truth and if those questions were ever propounded to me in that way, I diden't fully understand them.

Adjourned until half past seven.

Met pursuant to adjournment, and continued the further taking of this deposition, as follows:

Redirect:

Int. 1. In the questions of the attorney for the plaintiff in this suit he speaks of the land being marked off, selected, &c., without stating that it was sold or bid off. Now, will you state what the fact is; whether the land was sold by you or checked off without being sold?

Ans. The land was sold by being publicly offered, the party saying that he would take the land, paying the taxes, costs, and interest
656 for the land, and then it was checked off on the advertised list or on the tax-books.

Int. 2. You say the party saying he would pay it by paying tax, interest, & cost. What do you mean; who?

Ans. I mean John Warford, for Meads & Reynolds.

Int. 3. State whether the sales were entered in your sales-book with the extensions as fast as you called off the land and Warford said he would take it and you checked it off to him, or how was it done, and when?

Ans. No, it was not entered in the sale'-book as it was sold, but was marked opposite each piece of land in the tax-book, the name of the

party who bought, and it was entered on the register of sales
657 book afterwards; was as much as a month or six weeks before all was entered upon register of sales book and certificates issued.

Int. 4. There is something stated in one of the questions of the attorney for the plaintiff about your clerk (Davenport) having something to do with the sales. Now you will please state what part said clerk did, if anything, in reference to the said *said* sales in offering it or checking it off when sold, or what he did and what you did.

Ans. What I done was to open the sale, offer the land, and make a mark opposite each tract of land, designating the purchaser, either on the tax-list or advertised list. Davenport then would write on the tax-duplicate, in ink, the names of the purchaser of each tract, and he would then carry it on the register of sales and then enter it upon the
658 certificates, and I stamped and signed the certificates.

Int. 5. Were the sales of the lands to O. Meads and D. Reynolds made in that way through Warford?

Ans. They were.

Int. 6. State what offices, if any, were held by said E. W. Davenport in Cass County, prior to that time, Jan., 1864.

Ans. He had been county judge, prosecuting attorney, and county surveyor prior to that time.

Int. 7. State when that paper purporting to be your deposition in the case of Campbell & Playter, referred to in cross-examination, was made you were or were not under the influence of liquor.

Ans. I am sorry to say that I was under the influence of liquor,
659 and have no distinct recollection of the contents of the paper at the time of placing my signature thereto.

Int. 8. State where the statements in that pretended deposition is different from your statements in your depositions in this cause, which is correct.

Ans. The depositions in this case is correct, to the best of my knowledge and recollection.

Recross-examination:

Int. 1. Have you had any conversation with the defendant Callanan with regard to the facts of this case or your deposition being taken at this time since our last adjournment?

Ans. I have had some conversation with him. He called my attention to three or four questions, I think.

Int. 2. Be particular and state what ones.

660 Ans. One in regard to how the sale was conducted and what my clerk done, and he asked me what offices Davenport had previously held, and he said that he merely wanted to get at the facts of the matter.

Int. 3. What else did you and he talk about, since last adjournment, relating to this case?

Ans. He asked me if it was a fact that I was under the influence of liquor at the time that Sulley pretended to take that deposition, and said he had heard I was. I told him that it was the fact, but that I hated very much to have such a thing brought out in my deposition, and he said that he should ask that question.

Int. 4. Have you now stated all the points that you have talked
661 about with Callanan with reference to this case since last adjournment?

Ans. I don't remember anything further that was said.

Int. 5. Did you and he talk together, since last adjournment, about what Warford or Davenport had sworn to in their depositions?

Ans. We did not.

Int. 6. Where did you take supper since last adjournment?

Ans. At the Aborn House.

Int. 7. Did Mr. Callanan dine with you or go to the hotel with you, and was you at his house since adjournment?

Ans. He did not dine with me. He did not go to the hotel with me. I never was at his house. Since last adjournment I visited several stores, doing a little shopping, employing most of my time.

662 Int. 8. Where did you have these conversations with Mr. Callanan since last adjournment *with Mr. Callanan?*

Ans. On your steps here and in the office below here. We stepped in there to wait until your office was open.

Int. 9. Since the taking of your former deposition herein have you transacted any business for Mr. Callanan; and if so, in what capacity?

Ans. The only business that I have transacted Mr. Callanan for several years—some parties requested me to write to him to get his price on a piece of land he had in our county; I done so, got his price, and consummated a sale to them.

Int. 10. When was that?

Ans. It was about one week ago.

Int. 11. Did he pay you for making this sale?

663 Ans. I retained my regular commissions out of the purchase-money.

Int. 12. How much did you receive, either directly or indirectly, from him for making that sale?

Ans. The sale amounted to $1,600, and I received as commissions $65. That is the regular commissions that I charge on all land; never charge less, unless by special contract, it being at the rate of 5 % on the first $1,000, and 2½ % on the excess of $1,000. All that I received was $65, directly or indirectly.

Int. 13. Have you the agency of any of his tax-lands, and was this land sold a part of his tax-lands?

Ans. I have not the agency of any of Mr. Callanan's lands. He gave a warranty-deed of this tract of land. I understand that he acquired it by tax-title.

664 Int. 14. What time did Warford come to the treasurer's office on the first day of his arrival at Lewis?

Ans. It was some time in the forenoon of the day. I couldn't give the hour.

Int. 15. What was the size of that treasurer's office?

Ans. As near as I can recollect, it was about 16 by 18 feet.

Int. 16. Were there any partitions or counters or other division in the room?

Ans. There was a counter, two partitions, in the room that was used for the treasurer's office.

Int. 17. Was this counter anything more than a table sitting in the room?

Ans. It would be what I would call a table or a counter; more, properly speaking, a table than a counter.

665 Int. 18. Were not you and Warford sitting at this table while he was making his selections for Reynolds & Meads?

Ans. I think we were.

Int. 19. Did you work at any time in making these selections except during the office hours of the day?

Ans. I don't think we did.

Int. 20. What time did Warford leave Lewis the next day after he came?

Ans. Couldn't say positively whether he left the next day or the day following. He left in the evening, as the stage left for the East in the evening.

Int. 21. Did you adjourn at noon of the first day; and if so, how long?

Ans. I don't remember distinctly, but the sale would naturally
666 be continued until after dinner; not longer than that, if it was continued—probably an hour.

Int. 22. What time did you quit in the afternoon of that day?

Ans. Four to five o'clock.

Int. 23. Did you work at night that day in making these selections?

Ans. Not in selling lands at tax-sale.

Int. 24. What time did Warford come into the office the next morning?

Ans. I don't remember at what time, but suppose at business hours in the morning, as he was at my office, I remember, during the business hours that he remained there. Would suppose at from 9 to 10 o'clock.

Int. 25. Did you stop work at noon of the second day; and if so, how long?

Ans. We stopped work, I suppose, about an hour.

667 Int. 26. What time in the afternoon of the second day did Warford leave the office?

Ans. I can't remember what time he left.

Int. 27. Give about the time.

Ans. If he went away the second day, he must have left about 4 o'clock.

Int. 28. Did you and he occupy your places at the table in the treasurer's office during the entire time he was selecting these lands for Reynolds & Meads?

Ans. My recollection was that while he was there in the office he was sitting at the table all of the time; I was sometimes sitting at the table and sometimes standing on my feet.

Int. 29. Did you not use the published list on that occasion for calling off the land to Warford?

668 Ans. I think I did, though I might have used the tax-duplicate.

Int. 30. Then you checked on this published list?

Ans. If I used the published list, I checked on it.

Int. 31. Did you call all the lands to Warford regularly on this list, or did you skip a part in reading them off?

Ans. I called the lands off in rotation. Such as Warford wanted he took.

Int. 32. How was he guided as to what he wanted? What circumstances?

Ans. By the number of years the land was delinquent.

Int. 33. If the land was delinquent for more than three years, what would Warford say when you read off such a piece?

669 Ans. He would simply pass it.

Int. 34. Then what would you do?

Ans. I would call off the next piece.

Int. 34. What do you mean by calling? Anything more than reading the description; if so, what?

Ans. Reading the description and offering the land for the taxes, interest, and cost.

Int. 35. What do you mean by offering the land? Anything more than reading the description; if so, what?

Ans. I mean by offering the land, offering it for sale for the delinquent taxes, interest, & costs. I read it off, of course; I done nothing more but check it on the list.

Int. 35. How did you make these checks on the published list? Was it a cross, the letter V, or drawing a line through the description?

670 Ans. My recollection is that the land sold to Meads was checked by writing M opposite the piece of land, & R opposite those sold *sold* to Reynolds. Whether this was on the published list or on the tax-list, I would not be positive.

Int. 36. How did you get all the land in one side of the county to Meads & those on the other side to Reynolds in making such regular call of the list & marking thus?

Ans. That would be according to the tax-duplicate. If Reynolds commenced in one part of the county and go through, he would get it so. If Meads done the same, he would get it in that way.

Int. 37. Is that they way it was upon the published list or upon the tax-list as recorded & printed, and would it happen so on regular call of the list?

671 Ans. That is the way it was upon the tax-duplicate. I am not positive about the published list, but supposed it would be the same.

Int. 38. How many thousand dollars did Warford invest at that time in these Reynolds and Meads purchases?

Ans. It was somewhere from seven to ten thousand dollars.

Int. 39. Was there any lands either called off to, selected by, or checked to any other person during the time Warford was at your office except those that were read off to him as sold to Reynolds & Meads? If so, state to whom read off or checked.

Ans. I have recollection of one piece being bid off by Miles White.

Int. 40. Who selected or bid off that?

Int. 41. Who selected or bid off that piece for Miles White?

Ans. I think it was Henry Temple.

672 Int. 42. That was done by Temple passing in a slip of paper, was it not?

Ans. It is likely it was. It was a tract of land that he was attorney for White in.

Int. 43. Do you now know from a personal examination of the records the number of acres embraced in the Reynolds selection or the Meads selections, or both in the aggregate?

Ans. I do not.

Int. 44. Was there any person present at any time while John Warford and yourself were making these selections for Reynolds & Meads who either bid upon lands you then read off to Warford, or offered to bid on them? If so, who was it? Give his name and residence.

(Objected to as irrelevant and immaterial, and because it assumes a falsehood. It assumes that they did make selections, when the proof is that Warford made purchases.)

673 Ans. There was no bidders other than Warford, that I now remember of, present.

Int. 45. When you say the land was sold by being publicly offered, the party saying that he would take the land, paying taxes, costs, and interests for the lands, and then it was checked off on the advertised list on tax-books, do you mean to say that this was done in the office publicly, in contradistinction from secretly? Is this your meaning, and was it so done as that any person could have known without inquiry just what was being done by you and Warford at that time?

Ans. I mean to say that it was done publicly, and anybody who saw proper could bid on the land, and anybody would know what Warford and I were doing that wished to.

Int. 46. Did you conduct your business as between you and
674 Warford in this transaction in the ordinary tone of voice, or was it not in a suppressed tone of voice, under that of ordinary conversation?

Ans. It was in the ordinary tone of voice. Nothing secret about it.

Int. 47. Who took part with you in the reading, selection, marking, or checking of these lands at the time of this transaction between you and Warford besides you and Warford, if any one, or heard your conversation or the reading of the descriptions to Warford? Give their name and residence. I mean the reading and selections. I don't mean in making up the records afterwards.

Ans. William Wandell, of Atlantic, who was clerk of the board of supervisors, who was in attendance and checked from a published list, I think, and Davenport, who now lives at Creston, I believe, was engaged in the office and may have checked some of the sales made to
675 Warford. I can't say who heard the transactions that were being done, but any one in the room might have heard them.

Int. 48. What office did E. W. Davenport hold, if any, at the time of this transaction between you and Warford?

Ans. He did not hold any unless it was county surveyor, and I am not positive about his holding that office at that time.

Int. 49. Where have you resided ever since that transaction, and where do you now reside, and when did you last hold the office of treasurer of Cass County?

Ans. I have resided in Lewis and Atlantic, Cass Co., Iowa, since that transaction, and my last term of office as county treasurer expired on the first day of January, 1866.

Int. 50. Are you in the habit of being under the influence of
676 liquor?

Ans. I am not now; I have been heretofore to some extent occasionally.

Int. 51. How do you now remember if that you was under the influence of liquor when you gave that deposition in Campbell vs. Playter, if you don't remember of the giving it?

Ans. I know that I was under the influence of liquor when Sulley came to my office and requested me to go down to Sharp's with him, and I remember of answering some questions and of signing what is purported there to be my deposition.

Int. 52. Do you mean to say, under the solemnity of your oath, that Mr. Sharp, the notary who took that deposition, administered to you an oath as a witness in that case and wrote out that deposition as your testimony while you were drunk?

Ans. No, sir; I do not think that Mr. Sharp realized that I was
677 particularly intoxicated. He might have known that I had been drinking at that time. I was but little acquainted with Mr. Sharp, and I don't suppose that he fully understood my habits. I don't think he is that kind of a man that would do anything wrong in that way if he knew it.

Int. 53. Did the use of intoxicating liquor when you used it, and especially at the time of giving that deposition, have a tendency to create within you a desire or will to tell that which was untrue?

Ans. My disposition has been this for a number of years past: If I touched intoxicating liquors at all, I couldn't leave it off until I become

intoxicated, and I might meet a man on the street in that condition, and have a conversation with him, and the next day, probably, not
678 remember the substance of that conversation. I don't know that it would have a tendency to make me tell what was untrue intentionally, but it would have a tendency to cause me to say things that I did not understand the meaning of at the time.

Int. 54. Was you in the habit of drinking while you were in the treasurer's office?

Ans. I was not. I drank some while I held that office, but not while I transacted business; it would be occasionally when I went away from home.

Int. 55. Wasen't you under the influence of liquor frequently during the latter part of the year 1863, and during the year 1864, and did you not drink intoxicating liquors during that time, in the town of Lewis, Cass County, Iowa?

Ans. I did not. There was over two years that I never touched
679 a drop of liquor about that time; I coulden't use liquor and attend to the business that I had to do.

Int. 56. When did you quit about that time, and when did you commence about that time?

Ans. I coulden't say just when I quit or when I commenced; I don't think I used any liquors in the years 1863 & 1864.

Int. 57. Did you not fix the time for the taking place of the sale of tax-lands in Cass County, in the advertised notice you published thereof, and under which you sold these lands in Jan. 4th, 1864, as to be held on the 4th day of Jan., 1863, instead of Jan. 4th, 1864, and was it not so published in your notice of said sale, and was you under the influence of liquor when that was published in that way, and when you undertook to sell under said notice?

680 Ans. I made out the advertised list, and in the original copy it was advertised for Jan. 4th, 1864. When it was published in the paper it was published 1863, instead of 1864, and I was not under the influence of liquor.

Int. 58. Did you ever publish, or cause to be published, prior to the sale of Jan. 4th, 1864, any other notice thereof except the one that fixed the time of sale for Jan., 1863?

Ans. I did not publish any other notice, further than I called the publisher's attention to this error, and he said he would correct it as far as he could. How far he corrected it I don't know.

ISAAC DICKERSON.

Subscribed and sworn to by Isaac Dickerson before me this 6th day of May, 1874.

D. F. CALLENDER,
Notary Public.

681 EXHIBIT A.

John P. Campbell, H. D. H. Playter, pursuant to notice duly served, appeared before me this 19th of Sept., 1871, the plaintiff by his attorneys, Brown, Campbell & Sully, no appearance by defendants, and the witness Isaac Dickerson & W. Warwick, of lawful ag , being produced and duly sworn to tell the truth, the whole truth, and nothing but the truth, make oath & depose as follows, to wit:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Isaac Dickerson; my age is forty years; residence Atlantic, Cass Co., Iowa; occupation real-estate dealer.

Int. 2. What years were you treasurer of Cass County?

Ans. From April, 1857, to January, 1866.

682 Int. 3. There was a tax-sale held in January, 1864, at which a large body of land was marked off to D. Reynolds and O. Meads. Please state how that sale was conducted; what portion of the county was marked off to Reynolds, and what portion to Meads, and the amount of money invested on each.

Ans. The tax-sale was held on the 4th day of January, 1864; the sale was commenced on that day by public outcry at the court-house door. My instructions were, as near as I can remember, to commence at the northeast corner of the county, and enter up the lands in the north part of the county to O. Meads, by taking the land right in rotation that was delinquent, & the south part of the county to Dexter Reynolds. Mr. E. W. Davenport made all the entries and made out all the certificates; it occupied his time from the 4th day of January to the latter part
683 of February, to enter the lands up on the books, and make out the certificates. I, being engaged in other business in the office, merely signed the certificates and cancelled the stamps. The amount of the investment by Meads & Reynolds was between ten (10) & eleven (11) thousand dollars, very nearly equally divided between them.

Int. 4. Before anything was marked off to Meads & Reynolds, there was some pieces sold to residents, was there not?

Ans. There was several residents wanted to invest small amounts in land; they made the selection, & their lands were entered up to them.

Int. 5. What was the language of Meads & Reynolds, as near as you can recollect, in ordering the certificates, as to how much money he wanted to invest, and how he wanted it invested?

684 Ans. My recollection is that their agent wrote me that he wanted to invest about ten thousand dollars, & his instructions was to commence in the northeast part of the county for O. Meads, run through the county east & west, until about half was taken in the name of O. Meads, & then wanted the balance to about that amount to Dexter Reynolds, & be careful not to take any railroad land or any timber lands, and, as near as my recollection serves me, he didn't want any resident lands.

Int. 6. Did he appear personally at the sale?

Ans. My recollection is not clear on that point. He instructed me by letter how to proceed at the sale. The sale was commenced on Monday, and he was either here at the county-seat on day of the sale or one or two weeks later, and at this time I wouldn't be positive which.

685 Int. 7. There was no bidding off each piece at public auction by him, was there; i. e., of public outcry of each piece, & bidding made by him?

Ans. There was not; his instructions to me was where there was no opposite bids, to enter up the lands to these parties, and there being no opposite bids he did not consider it necessary to make public outcry for each separate piece.

Int. 8. What was the name of the agent?

Ans. John Warford; he was the only agent I know of that Reynolds & Meads had.

Int. 9. In making out these certificates to Meads & Reynolds, Mr. Davenport then just took the tax-book and made them (the certificates) out from them according to Warford's instructions?

Ans. Yes.

686 Int. 10. Were you present at that Nov., 1867, sale when Callanan bid in all of his lands again?

Ans. I can't say that I was present, positively, but my understanding was that they were to be bid in by the county treasurer for him, Callanan.

Int. 11. Who was Callanan's agent at that time, Nov. 1867?

Ans. Mr. Warwick, the county treasurer, was the only agent I know of his having in this county.

Int. 12. There was a sale to Dexter Reynolds in January, 1865; who bid in these lands at this (January, 1865,) sale, if there was such a sale?

Ans. They were bid in by Warford for Reynolds.

Int. 13. Was Warford present at that sale?

Ans. No, he was not.

687 Int. 14. How did he do? Send a list by letter?

Ans. He sent a list by letter.

Int. 15. The certificates were made out from that list, were they?

Ans. Yes.

Int. 16. On Nov. 6th, 1865, there was a sale to Whitney, F. H. How. Were the certificates made out on that sale, and what from?

Ans. They were made out from the tax-books.

Int. 17. Did Whitney furnish a list of the lands he wanted?

Ans. My recollection is that he furnished a list of the lands he wanted.

Int. 18. Did he attend personally and bid in the lands he wanted?

688 Ans. He may have been around the office, but I have no recollection of any public bidding by him.

(Signed) ISAAC DICKERSON.

689 STATE OF IOWA,
Polk County:

I, D. F. Callender, a notary public within and for said county and State, do hereby certify that in pursuance of the foregoing-attached agreement I caused to come before me Isaac Dickerson, on the 6th day of May, 1874, at the hours mentioned in the foregoing deposition, at the law office of Phillips & Phillips, in the city of Des Moines, Iowa, who was then and there by me duly sworn and examined, and his examination reduced to writing, and after being by me read over to said witness, the same was sworn to and subscribed to by him before me, and his said deposition herewith returned. I further certify that Exhibit "A" hereto attached, is a just and true copy of the deposition shown the witness, and inquired about in his cross-examination. Also certify that

690 the adjournments occurred as stated in said deposition; and Phillips & Phillips appeared and conducted the examination on the part of the plaintiff, and James Callanan appeared and conducted the examination on the *the* part of the defendants; being the direct examination.

Given under my hand and notorial seal this 7th day of May, 1874.

D. F. CALLENDER,
Notary Public, Polk Co., Iowa.

Witness fees, 82 miles, $
Notary fees, $

(Endorsed:) Filed May 21st, 1874. George B. Corkhill, clerk.

691 And on the 25th day of August, 1874, a stipulation of parties was filed in said clerk's office, which said stipulation is in words and figures following, to wit:

In U. S. circuit court, dist. of Iowa.

MICHAEL HURLEY
vs.
JAMES CALLANAN ET AL. } In equity.

At request of respondents and to save expense in the further progress of this cause on appeal to Supreme Court of the United States, if respondents shall take said cause to said Supreme Court by appeal, it is hereby stipulated—

1st. That whereas each of the eight several deeds offered in evidence by the respondents as being executed by the treasurer of Cass County, Iowa, to Dexter Reynolds, and each bearing date January 29th, 1867, contains a description of a portion of the lands in controversy,
692 with numerous descriptions of other lands not in controversy in this cause; and whereas each of the said deeds is like each and every other except as to the description and recital of taxes thereon: It is therefore agreed that said respondents may copy into the transcript on such appeal but one of such deeds, and omit therefrom all description of land not in controversy herein, and insert in such deed when copied in such transcript all other descriptions of lands in controversy in this suit and embraced in the other of said eight deeds bearing date as aforesaid, with the statement of taxes thereon as recited in said other eight deeds, and the same may so be printed and certified as if the eight deeds were but one deed in fact.

2nd. And the like agreement & stipulation is made with reference to the three certain other tax-deeds offered in evidence by said respondents as being executed by the treasurer of Cass County, Iowa, to
693 Orlando Meads, bearing date January 31st, 1867.

3rd. And the like agreement and stipulation is made with reference to the two other tax-deeds offered in evidence by respondents as being executed by the treasurer of Cass County, Iowa, to Orlando Meads, bearing date May 1st, 1872, and which said last-mentioned deeds are record-deeds executed to correct a supposed want of compliance with the provision of Iowa statutes in the recitals in the former deeds.

4th. And the like agreement is hereby made with reference to the three certain other tax-deeds offered in evidence by respondants as being executed by the treasurer of Cass County, Iowa, to Dexter Reynolds, and bearing date May 1st, 1872, and which said last-mentioned deeds are also record-deeds executed to correct a supposed want of compliance with the provisions of the Iowa statutes in making the
694 first tax-deed.

5th. And the like agreement is hereby made with reference to the certain other tax-deeds offered in evidence by respondents as being executed by the treasurer of Cass County, Iowa, to Dexter Reynolds, bearing date July 15th, 1868, so far as to authorize the omission therefrom of the description of all lands not embraced in this controversy. But this agreement shall in no manner change the character of such deeds as evidence or render them competent as such, but complainant's objection as to the competency thereof as evidence under the facts & proof in this cause shall be considered and held to be in full force upon such appeal.

(Signed) MICHAEL HURLEY, *Compl't*,
by PHILLPS & PHILLIPS, *Attys.*
J. R. BARCROFT, *Atty. for Resp.*

(Endorsed:) Filed Aug. 25, 1874. George B. Corkhill, clerk.

REC. 115—12

695 Know all men by these presents, that whereas the following-described pieces of real property situated in the county of Cass, and State of Iowa, viz: The southwest quarter of the northeast quarter of section eleven, in township seventy-four north, of range thirty-six west; the southeast quarter of the northeast quarter of section eleven, in township seventy-four north, of range thirty-six west; * * * * * * the northeast quarter of the northeast quarter of section three, in township seventy-four north, of range thirty-five west; the northwest quarter of the northeast quarter of section three, in township seventy-four north, of range thirty-five west; the northeast quarter of the northwest quarter of section three, in township seventy-four north, of
696 range thirty-five west; the northwest quarter of the northwest quarter of section three, in township seventy-four north, of range thirty-five west; * * * * * * * the north fr. ½ of the northwest quarter of section seven, in township seventy-four north, of range thirty-five west; the south fr. ½ of the northwest quarter of section seven, in township seventy-four north, of range thirty-five west; the north fr. ½ of the southwest quarter of section seven, in township seventy-four north, of range thirty-five west; the southwest quarter of the southwest quarter of section seven, in township seventy-four north, of range thirty-five west; the southeast quarter of the southwest quarter of section seven, in township seventy-four north, of range thirty-five west, were each subject to taxation for the years 1860, 1861, and 1862; * * *
697 * * * the northeast quarter of the northwest quarter of section twenty-five, in township seventy-five north, of range thirty-six west; the northwest quarter of the northwest quarter of section twenty-five, in township seventy-five north, of range thirty-six west; * * * * * * * the northwest quarter of the southwest quarter of section eighteen, in township seventy-four north, of range thirty-four west; the southwest quarter of the southwest quarter of section eighteen, in township seventy-four north, of range thirty-four west; * * * * * * the north fr. ½ of the northwest quarter of section nineteen, in township seventy-four north, of range thirty-five west; * * *
698 * * * the northeast quarter of the northwest quarter of section three, in township seventy-five north, of range thirty-six west; * * * * * * * the southwest quarter of the southeast quarter of section eight, in township seventy-four north, of range thirty-four west; the southeast quarter of the southeast quarter of section eight, in township seventy-four north, of range thirty-four west, were each subject to taxation for the years 1859, 1860, 1861, and 1862. * * * * * * *

And whereas at the time and place aforesaid the said Dexter Reynolds having offered to pay the sum of seven dollars and sixty-cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southwest quarter of the northeast quarter of section
699 eleven, in township seventy-four north, of range thirty-six west, for all of S. W. of N. E. which was the least quantity bid for. Taxes paid for 1863, $1.53; for 1864, $1.82; for 1865, $2.25; total, $13.20. * * * * * * *

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of seven dollars and sixty cents, being the whole amount of taxes, interest and costs, then due and remaining unpaid on the southeast quarter of the northeast quarter of section eleven, in township seventy-four north, of range thirty-six west, for all of S. E. of N. E., which was the least quantity bid for. Taxes paid for 1863, $1.53; for 1864, $1.82; for 1865, $2.25; total, $13.20.

* * * * * *

And whereas, at the time and place aforesaid, the said Dexter
700 Reynolds, having offered to pay the sum of four dollars and eighty-three cents, being the whole amount of taxes, interest and costs then due and remaining unpaid on the northeast quarter of the northeast quarter of section three, in township seventy-four north, of range thirty-five west, for all N. W. of N. E., sold for 1860, 1861, and 1862, which was the least quantity bid for. Taxes paid for 1863, $1.06; for 1864, $1.26; for 1865, $1.53; total, $8.68.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of four dollars and eighty-three cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid in the northwest quarter of the northeast quarter of section three, in township seventy-four north, of range thirty-five west, for all of N. W. of N. E. sold for 1860, 1861, and 1862,
701 which was the least quantity bid for. Taxes paid for 1863, $1.06; for 1864, $1.27; for 1865, $1.53; total, $8.69.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of four dollars and eighty-three cents, being the whole amount of taxes, interest and costs, then due and remaining unpaid on the northeast quarter of the northwest quarter of section three, in township seventy-four north, of range thirty-five west, for all of N. E. of N. W. sold for 1860, 1861, and 1862, which was the least quantity bid for. Taxes paid for 1863, $1.06; for 1864, $1.26; for 1865, $1.54; total, $8.69.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of four dollars and eighty-three cents, being the whole amount of taxes, interest and costs, then due and remaining unpaid on the northwest quarter of the northwest
702 quarter of section three, in township seventy-four north, of range thirty-five west, for all of N. W. of N. W. sold for 1860, 1861, and 1862, which was the least quantity bid for. Taxes paid for 1863, $1.06; for 1864, $1.26; for 1865, $1.53; total, $8.68.

* * * * * *

And whereas, at the time and place aforesaid, Dexter Reynolds, of the county of Albany and State of New York, having offered to pay the sum of eight dollars and sixty-five cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the north fr. ½ of the northwest quarter of section seven, in township seventy-four north, of range thirty-five west, for all of N. fr. ½ of N. W. ¼ sold for 1860, 1861, and 1862, which was the least quantity bid for. Taxes paid for 1863, $2.19; for 1864, $2.60; for 1865, $3.19; total, $16.63.

And whereas, at the time and place aforesaid, the said Dexter
703 Reynolds, having offered to pay the sum of eight dollars and sixty-five cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the south fr. ½ of the northwest quarter of section seven, in township seventy-four north, of range thirty-five west, for all of S. fr. ½ of N. W. ¼ sold for 1860, 1861, & 1862, which was the least quantity bid for. Taxes paid for 1863, $2.21; for 1864, $2.60; for 1865, $3.19; total, $16.65.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of nine dollars and seventeen cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the north fr. ½ of the southwest quarter of section seven, in township seventy-four north, of range thirty-five west, for all of N. fr. ½ of S. W. ¼ sold for 1860, 1861, and 1862, which was the

704 least quantity bid for. Taxes paid for 1863, $2.20; for 1864, $2.63; for 1865, $3.19; total, $17.19.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of four dollars and forty-two cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southwest quarter of the southwest quarter of section seven, in township seventy-four north, of range thirty-five west, for all of S. W. of S. W. sold for 1861 and 1862, which was the least quantity bid for. Taxes paid for 1863, $1.10; for 1864, $1.31; for 1865, $1.59; total, $8.42.

And whereas, at the time and place aforesaid the said Dexter Reynolds, having offered to pay the sum of four dollars and forty-two cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southeast quarter of the southwest
705 quarter of section seven in township seventy-four north, of range thirty-five west, for all of S. E. ¼ of S. W. ¼ sold for 1861 and 1862, which was the least quantity bid for. Taxes paid for 1863, $1.10; for 1864, $1.32; for 1865, 1.60; total, $8.44.

* * * * * * *

And whereas, at the time and place aforesaid, Dexter Reynolds, of the county of Albany, and State of New York, having offered to pay the sum of six dollars and fifty cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the northeast quarter of the northwest quarter of section twenty-five, in township seventy-five north, of range thirty-six west, for all of N. E. of N. W., sold for 1860, 1861, and 1862, which was the least quantity bid for. Taxes paid for 1863, $1.41; for 1864, $2.13; for 1865, $2.45; total $12.49.

706 And whereas, at the time and place aforesaid, the said Dexter Reynolds having *of* to pay the sum of eight dollars and fifty-nine cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the northwest quarter of the northwest quarter of section twenty-five, in township seventy-five north, of range thirty-six west, for all of N. W. of N. W. sold for 1859, 1860, 1861, and 1862, which was the least quantity bid for. Taxes paid for 1863, $1.41; for 1864, $2.03; for 1865, $2.45; total $14.58.

* * * * * * *

And whereas, at the time and place aforesaid, the said Dexter Reynolds having offered to pay the sum of three dollars and thirty-eight cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the northwest quarter of the southwest quar-
707 ter of section eighteen, in township seventy-four north, of range thirty-four west, for all of N. W. of S. W., sold for 1861 and 1862, which was the least quantity bid for. Taxes paid for 1863, $1.53; for 1864, $1.82; for 1865, $2.25; total $8.98.

And whereas, at the time and place aforesaid, the said Dexter Reynolds having offered to pay the sum of three dollars and thirty-eight cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southwest quarter of the southwest quarter of section eighteen, in township seventy-four north, of range thirty-four west, for all of S. W. of S. W., sold for 1861 and 1862, which was the least quantity bid for. Taxes paid for 1863, $1.53; for 1864, $1.82; for 1865, $2.25; total, $8.98.

* * * * * * *

And whereas, at the time and place aforesaid, the said Dexter
708 Reynolds having offered to pay the sum of seven dollars and fifty-seven cents, being the whole amount of taxes, interest, and

costs then due and remaining unpaid on the north fr. ½ of the northwest quarter of section nineteen, in township seventy-four north, of range thirty-five west, for all of N. fr. ½ of N. W., sold for 1860, 1861, and 1862, which was the least quantity bid for. Taxes paid for 1863, $2.26; for 1864, $2.70; for 1865, $3.22; total, $15.75.

* * * * * * *

And whereas, at the time and place aforesaid, Dexter Reynolds, of the county of Albany, and State of New York, having offered to pay the sum of eight dollars and fifty-nine cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the northeast quarter of the northwest quarter of section three, in township seventy-five north, of range thirty-six west, for all of N. E. of N.
709 W., sold for 1859, 1860, 1861, and 1862, which was the least quantity bid for. Taxes paid for 1863, $1.41; for 1864, $2.13; for 1865, $2.45; total, $14.58. * * * * * *

And whereas, at the time and place aforesaid, the said Dexter Reynolds having offered to pay the sum of three dollars and thirty-eight cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southwest quarter of the southeast quarter of section eight, in township seventy-four north, of range thirty-four west, for all of S. W. of S. E., sold for 1861 and 1862, which was the least quantity bid for. Amount paid tax of 1863, $1.53; for 1864, $1.82; for 1865, $2.25; total, $8.98.

And whereas, at the time and place aforesaid, the said Dexter Reynolds having offered to pay the sum of three dollars and thirty-eight cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southeast quarter of the south-
710 east quarter of section eight, in township seventy-four north, of range thirty-four west, for all S. E. of S. E., sold for 1861 and 1862, which was the least quantity bid for. Tax of 1863, paid, $1.53; of 1864, $1.82; of 1865, $2.25; total, $8.98.

And payment of the said several sums of money having been by him made to the said treasurer, the said respective pieces of property were respectively stricken off to him at the respective prices aforesaid.

And whereas three years have elapsed since the date of said sale, and the said respective pieces of property have not been redeemed therefrom, as provided for by law, nor either of them, or any part thereof:

Now, therefore, I, Wilkins Warwick, treasurer of the county aforesaid, for and in consideration of the said several sums of money to the treasurer paid as aforesaid, and by virtue of the statute in such
711 case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Dexter Reynolds, his heirs and assigns, the several pieces of real property which were stricken off to him at the said sale as hereinbefore described, to have and to hold unto him the said Dexter Reynolds, his heirs and assigns forever, subject, however, to all the rights of redemption provided by law.

In witness whereof I, Wilkins Warwick, treasurer as aforesaid, by virtue of the authority as aforesaid, have hereunto subscribed my name on this 29th day of January, A. D. 1867.

WILKINS WARWICK,
Treasurer.

[U. S. int.-rev. stamp, 50 cts., on each deed but one.]

STATE OF IOWA,
Cass County:

I hereby certify that before me, Henry Temple, notary public in and

for said county, personally appeared the above-named Wilkins
712 Warwick, treasurer of said county, personally known to me to be the treasurer of said county, at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of said county, and who acknowledged the execution of the same to be his voluntary act and deed as treasurer of said county for the purpose therein expressed.

Given under my hand and seal this 29th day of January, A. D. 1867.

[L. S.] HENRY TEMPLE,
Notary Public.

713 Treasurer's tax-deed to Dexter Reynolds. Filed for record the 29th day of January, A. D. 1867, at 9 o'clock a. m. Entered for taxation this 29th day of January, A. D. 1867. Recorded in book J, pages 368, 369, & 370, 371, 872, 373, 374, 375, 376, 377, 378, 279, 385, 386, 387, 394, 395, 435, 436, 437, 449, 450, 451. Fees $2.50, paid.

H. TEMPLE,
Recorder.

(Endorsed:) Filed May 27, 1874. George B. Corkhill, clerk Cass County, Iowa.

Treasurer's tax-deed.

Know all men by these presents that whereas the following-described pieces of real property, situated in the county of Cass, and State of Iowa, viz: The northeast quarter of the northwest quarter of section four, in township seventy-seven north, of range thirty-six west; the northwest quarter of the northwest quarter of section four, in township seventy-seven north, of range thirty-six west; * * * * * * * the southeast quarter of the southwest quarter of section nineteen, in township seventy-six north, of range thirty-seven west; * * * * * * * the southwest quarter of the northwest quarter of section twenty-nine, in township seventy-six north, of range thirty-five west; * * * * * * were each subject to taxation for the years 1860, 1861, and 1862;

714 and whereas, at the time and place aforesaid, Orlando Meads, of the county of Albany, and State of New York, having offered to pay the sum of four dollars and eighty-three cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the northeast quarter of the northwest quarter of section four, in township seventy-seven north, of range thirty-six west; for the all of N. E. of N. W., sold for 1861 and 1862, which were the least quantity bid for. Taxes paid 1863, $1.53; 1864, $2.00; for 1865, $2.05; total $10.41.

And whereas, at the time and place aforesaid, the said Orlando Meads, having offered to pay the sum of four dollars and eighty-three cents, being the whole amount of taxes, interest, and costs, then due and remaining unpaid on the northwest quarter of the northwest quarter of section four, in township seventy-seven north, of range thirty-six west, for the all of northwest of northwest, (sold for 1861 and 1862,) which was the least quantity bid for; taxes paid for 1863, $1.53; for 1864, $2.00; for 1865, $2.05; total, $10.41. * * * * * *

And whereas, at the time and place aforesaid, the said O. Meads having offered to pay the sum of five dollars and thirty-three cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southwest quarter of the southwest quarter of section nineteen, in township seventy-six north, of range thirty-seven west, for

the all S. W. of S. W., which was the least quantity bid for; taxes paid for 1863, $1.11; for 1864, $1.64; for 1865, $1.96; total, $10.04. * * * * *

And whereas, at the time and place aforesaid, the said O. Meads, having offered to pay the sum of five dollars and fourteen cents, being the whole amount of taxes, interests, and costs then due and remaining unpaid on the southwest quarter of the northwest quarter of section twenty-nine in township seventy-six north, of range thirty-five west, for the all S. W. of N. W., which was the least quantity bid for; taxes paid for 1863, $1.61; for 1864, $1.51; for 1865, $2.45; total, $10.71.

715 And payment of the said several sums of money having been by him made to the said treasurer, the said respective pieces of property were respectively stricken off to him at the respective prices aforesaid.*

And whereas three years have elapsed since the date of said sale, and the said respective pieces of property have not been redeemed therefrom as provided for by law, nor either of them, nor any part thereof:

Now, therefore, I, Wilkins Warwick, treasurer of the county aforesaid, for and in consideration of the said several sums of money to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Orlando Meads, his heirs and assigns, the several pieces of real property which were stricken off to him at the said sale as hereinbefore described, to have and to hold unto him, the said Orlando Meads, his heirs and assigns, forever; subject, however, to all the rights of redemption provided by law.

In witness whereof I, Wilkins Warwick, treasurer as aforesaid, by virtue of the authority as aforesaid, have hereunto subscribed my name, on this 31st day of January, A. D. 1867.

WILKINS WARWICK,
Treasurer.

[U. S. int. rev. stamp 50 cts. on each deed.]

* NOTE.—This blank is to be filled up only in cases where the certificate of purchase has been assigned to a third party, and to whom the deed is made and should be filled up as per form in code of 1873, page 154, 32d line from top.

STATE OF IOWA,
Cass County, ss:

I hereby certify that before me, Henry Temple, a notary public, in and for said county, personally appeared the above-named Wilkins Warwick, treasurer of said county, personally known to me to be the treasurer of said county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of said county, and who acknowledged the execution of the same to be his voluntary act and deed as treasurer of said county, for the purposes therein expressed.

Given under my hand and seal this 31st day of January, A. D. 1867.

[L. S.] HENRY TEMPLE,
Notary Public.

(Endorsed:) Filed May 27, 1874. George B. Corkhill, clerk.

(Endorsed:) Treasurer's tax deed. Lands. To Orlando Meads. Entered for taxation this 31st day of January, A. D. 1867. , county auditor. Filed for record on the 31st day of January, A. D. 1867, at 9 o'clock a.

m., and recorded in book J, on pages 516, 517, & 518, 486, 487, 488, 542, 543, 544. Fees, $2.00. Paid. H. Temple, county recorder, Cass County, Iowa.

716 *Treasurer's tax deed.—Form 222½.*

Know all men by these presents, that whereas the following-described pieces of real property, situated in the county of Cass, and State of Iowa, viz: The southwest quarter of the northwest quarter of section twenty-nine, (29,) in township seventy-six (76) north, of range thirty-five (35) west, 5 p. m., Iowa; * * * * * the southeast quarter of the northwest quarter of section nineteen, (19,) in township seventy-six (76) north, of range thirty-seven west, 5 p. m., Iowa; the northwest quarter of the northwest quarter of section nineteen, (19,) in township seventy-six (76) north, of range thirty seven (37) west. 5 p. m., Iowa; the southwest quarter of the northwest quarter of section nineteen, (19,) in township seventy-six (76) north, of range thirty-seven west, 5 p. m., Iowa; the northwest quarter of the southwest quarter of section nineteen, (19,) in township seventy-six (76) north, of range thirty-seven (37) west, 5 p. m., Iowa; the southwest quarter of the southwest quarter of section nineteen, (19,) in township seventy six (76) north, of range thirty-seven (37) west, 5. p. m., Iowa, were each subject to taxation for the years 1860, 1861, & 1862. * * * * * *

717 And whereas, at the time and place aforesaid, Orlando Meads, of the county of Albany, and State of New York, having offered to pay the sum of five (5) dollars and fourteen (14) cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southwest quarter of the northwest quarter of section twenty-nine, (29,) in township seventy-six (76) north, of range thirty-five (35) west, 5 p. m., Iowa, for the whole of the last above-described tract of land, * * * * * * which was the least quantity bid for. * * * * * *

And whereas, at the time and place aforesaid, the said Orlando Meads, of the county of Albany, and State of New York, having offered to pay the sum of seven dollars and ninety-two cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southeast quarter of the northwest quarter of section nineteen, (19,) in township seventy-six (76) north, of range thirty-seven (37) west, 5 p. m., Iowa, for whole of the last above-described tract of lands, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Orlando Meads, having offered to pay the sum of five (5) dollars and thirty-three cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the northwest quarter of the northwest quarter of section nineteen, (19,) in township seventy-six (76) north, of range thirty-seven west, 5 p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Orlando Meads, having offered to pay the sum of five (5) dollars and thirty-three cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southwest quarter of the northwest quarter of section nineteen, (19,) in township seventy-six (76) north, of range thirty-seven (37) west, 5 p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Orlando Meads, having offered to pay the sum of five (5) dollars and thirty-three

cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the northwest quarter of the southwest quarter of section nineteen, (19,) in township seventy-six (76) north, of range thirty-seven west, 5 p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Orlando Meads, having offered to pay the sum of five (5) dollars and thirty-three (33) cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southwest quarter of the southwest quarter of section nineteen, (19,) in township seventy-six (76) north, of range thirty-seven (37) west, 5 p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

718 And payment of the said several sums of money having been by him made to the said treasurer, the said respective pieces of property were respectively stricken off to him at the respective prices aforesaid. *

And whereas three years have elapsed since the date of said sale, and said respective pieces of property have not been redeemed therefrom as provided for by law, nor either of them, nor any part thereof;

Now, therefore, I, Wilkins Warwick, treasurer of the county aforesaid, for and in consideration of the said several sums of money to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Orlando Meads, his heirs and assigns, the several pieces of real property which were stricken off to him at the said sale hereinbefore described, to have and to hold unto him, the said Orlando Meads, his heirs and assigns, forever; subject, however, to all the rights of redemption provided by law.

In witness whereof I, Wilkins Warwick, treasurer as aforesaid, by virtue of authority as aforesaid, have hereunto subscribed my name on this first day of May, A. D. 1872.

(S'g'd) WILKINS WARWICK,
Treasurer.

* NOTE.—This blank is to be filled up only in cases where the certificate of purchase has been assigned to a third party, and to whom the deed is made, and should be filled up as per form in code of 1873, page 154, 32d line from top.

STATE OF IOWA,
Cass County, ss:

I hereby certify that before me, a notary public in and for said county, personally appeared the above-named Wilkins Warwick, treasurer of said county, personally known to me to be the treasurer of said county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of said county, and who acknowledged the execution of the same to be his voluntary act and deed, as treasurer of said county, for the purposes therein expressed.

Given under my hand and seal this first day of May, A. D. 1872.

[L. S.] WALTER B. TEMPLE,
Notary Public.

(Endorsed:) Filed May 27, 1874. George B. Corkhill, clerk.

(Endorsed:) Treasurer's tax-deed. Lands. The county treasurer of Cass County to Orlando Meads. Entered for taxation this second day of May, A. D. 1872. Wm. Gardner, county auditor. Filed for record

on the 2d day of May, A. D. 1872, at 2 o'clock p. m., and recorded in book P, on pages 109 & 110 of Cass County records. H. E. Bacon, county recorder. , deputy.

719 Know all men by these presents, that whereas the following-described pieces of real property, situated in the county of Cass and State of Iowa, viz: The northeast quarter of the northwest quarter of section three, (3,) in township seventy-five (75) north, of range thirty-six (36) west, 5 p. m., Iowa; the northwest quarter of the northwest quarter of section twenty-five, (25,) in township seventy-five (75) north, of range thirty-six (36) west, 5 p. m., Iowa, were each subject to taxation for the years 1859, 1860, 1861, & 1862. * * * * * * * The north fractional half of the northwest quarter of section seven, (7,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa; the south fractional half of the northwest quarter of section seven, (7,) in township seventy-four (74) north, of range thirty-

720 five (35) west, 5 p. m., Iowa; the north fractional half-quarter of the southwest quarter of section seven, (7,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa; the northeast quarter of the northeast quarter of section three, (3,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa; the northwest quarter of the northeast quarter of section three, (3,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa; the northeast quarter of the northwest quarter of section three, (3,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa; the northwest quarter of the northwest quarter of section three, (3,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa; * * * * * * * were each subject to taxation for the

721 years 1860, 1861, & 1862; the southwest quarter of the southwest quarter of section seven, (7,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa; the southeast quarter of the southwest quarter of section seven, (7,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa; the southwest quarter of the southeast quarter of section eight, (8,) in township seventy-four (74) north, of range thirty-four (34) west, 5 p. m., Iowa; the southeast quarter of the southeast quarter of section eight, (8,) in township seventy-four (74) north, of range thirty-four (34) west, 5 p. m., Iowa; * * * * * * * were each subject to taxation for the years 1861 and 1862.

* * * * * *

And whereas, at the time and place aforesaid, Dexter Reynolds, of the county of Albany and State of New York, having offered

722 to pay the sum of eight (8) dollars and sixty-nine (69) cents, being the whole amount of taxes, interests and costs, then due and remaining unpaid on the northeast quarter of the northwest quarter of section three, (3,) in township seventy-five (75) north, of range thirty-six (36) west, 5 p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of eight (8) dollars and fifty-eight (58) cents, being the whole amount of taxes, interest, and costs, then due and remaining unpaid on the northwest quarter of the northwest quarter of section twenty-five, (25,) in township seventy-five (75) north, of range thirty-six (36) west, 5 p. m., Iowa, for the whole of the last above-described tract of land, w' ich was the last quantity bid for.

* * * * * *

723 And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of eight (8) dollars and sixty-five (65) cents, being the whole amount of the taxes, interest, and costs, then due and remaining unpaid on the north fractional half of the northwest quarter of section seven, (7,) in township seventy-four north, of range thirty-five (35) west, 5 p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of eight (8) dollars and sixty-five (65) cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the south fractional half of the northwest quarter of section seven, (7,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa, for the whole of the
724 last above-described tract of land, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of eight (8) dollars and ninety-seven (97) cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the north fractional half-quarter of the southwest quarter of section seven, (7,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of four (4) dollars and eighty-three cents (83) cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the northeast quarter of the northeast quarter of section three, (3,) in township seventy-four
725 (74) north, of range thirty-five (35) west, 5. p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of four dollars and eighty-three (83) cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the northwest quarter of the northeast quarter of section three, (3,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of four dollars and eighty-three (83) cents, being the whole amount of taxes, interest, and
726 costs then due and remaining unpaid on the northwest quarter of the northeast quarter of section three, (3,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of four (4) dollars and eighty-three (83) cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the northwest quarter of the northwest quarter of section three, (3,) in township seventy-four (74) north, of range thirty-five (35) west, p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for. * * * * * *

And whereas, at the time and place aforesaid, Dexter Reynolds, of the county of Albany and State of New York, having offered to

727 pay the sum of four (4) dollars and twenty-two (22) cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southwest quarter of the southwest quarter of section seven, (7,) in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of four dollars and twenty-two (22) cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southeast quarter of the southwest quarter of section 7, in township seventy-four (74) north, of range thirty-five (35) west, 5 p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

728 And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of three (3) dollars and thirty-eight (38) cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southwest quarter of the southeast quarter of section eight, (8,) in township seventy-four (74) north, of range thirty-four (34) west, 5 p. m., Iowa, for the whole of the last above-described tract of land, which was the least quantity bid for.

And whereas, at the time and place aforesaid, the said Dexter Reynolds, having offered to pay the sum of three (3) dollars and thirty-eight (38) cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southeast quarter of the southeast quarter of section eight, (8,) in township seventy-four (74) north, of range thirty-four (34) west, 5 p. m., Iowa, for the whole of the last

729 above-described tract of land, which was the least quantity bid for. * * * * * * * * * * *

And payment of the said several sums of money having been by him made to the said treasurer, the said respective pieces of property were respectively stricken off to him at the respective prices aforesaid.

And whereas three years have elapsed since the date of said sale, and the said respective pieces of property have not been redeemed therefrom, as provided for by law, nor either of them, nor any part thereof:

Now, therefore, I, Wilkins Warwick, treasurer of the county aforesaid, for and in consideration of the said several sums of money to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Dexter Reynolds, his

730 heirs and assigns, the several pieces of real property which were stricken off to him at the said sale hereinbefore described; to have and to hold unto him, the said Dexter Reynolds, his heirs and assigns, forever, subject, however, to all the rights of redemption provided by law.

In witness whereof I, Wilkins Warwick, treasurer as aforesaid, by virtue of authority as aforesaid, have hereunto subscribed my name on this first day of May, A. D. 1872.

(Signed) WILKINS WARWICK,
Treasurer.

STATE OF IOWA,
Cass County, ss:

I hereby certify that before me, a notary public in and for said county, personally appeared the above-named Wilkins Warwick, treasurer of said county, personally known to me to be the treasurer of said county at the date of the execution of the above conveyance, and to be the

identical whose name is affixed to and who executed the
731 above conveyance as treasurer of said county, and who acknowledged the execution of the same to be his voluntary act and deed, as treasurer of said county, for the purpose therein expressed.

Given under my hand and seal this first day of May, A. D. 1872.

[L. S.] (Signed) WALTER B. TEMPLE,
Notary Public.

Treasurer's tax-deed. Lands. The county treasurer of Cass County to Dexter Reynolds. Entered for taxation this second day of May, A. D. 1872.

WM. GARDNER,
County Auditor.

Filed for record, on the 2nd day of May, A. D. 1872, at 2 o'clock p. m., and recorded in book P, on pages 106, 107, 108, county records.

H. E. BACON,
County Recorder.

(Endorsed:) Filed May 27, 1874. George B. Corkhill, clerk.

732 Know all men by these presents, that whereas the following-described pieces of real property, situated in the county of Cass and State of Iowa, viz: * * * * * * The southeast quarter of the southeast quarter of section twenty, in township seventy-seven north, of range thirty-six west, 5 p. m., Iowa. The southwest quarter of the southeast quarter of section twenty, in township seventy-seven north, of range thirty-six west, 5 p. m., Iowa. * * * * * * *

And whereas the taxes assessed upon said respective pieces of real property for the years aforesaid remained due and unpaid at the date of the sale hereinafter named. And whereas the treasurer of said county did, on the second day of January, A. D. 1865, by virtue of the authority in him vested by law, at the sale begun and publicly held on the first Monday of January, A. D. 1865, expose to public sale at the court-house in the county aforesaid, in substantial conformity
733 with all the requisitions of the statute in such case made and provided, the several pieces of real property above described, separately, for the payment of the taxes, interest, and costs then due and remaining unpaid on each of said pieces of real property respectively. * * * * * * *

And whereas, at the time and place aforesaid, Dexter Reynolds, of the county of Albany and State of New York, having offered to pay the sum of two dollars and fifteen cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on the southeast quarter of the southeast quarter of section twenty, in township seventy-seven north, of range thirty-six west, 5 p. m., Iowa, for the said piece of real property last described, which was the least quantity bid for.

And whereas, at the time and place aforesaid, Dexter Reynolds, of the county of Albany and State of New York, having offered to pay the sum of two dollars and fifteen cents, being the whole amount of
734 taxes, interest, and costs then due and remaining unpaid on the southwest quarter of the southeast quarter of section twenty, in township seventy-seven north, of range thirty-six west, 5 p. m., Iowa, for the said piece of real property last described, which was the least quantity bid for. * * * * * * *

And payment of the said several sums of money having been by him

made to the said treasurer, the said respective pieces of property were respectively stricken off to him at the respective prices aforesaid.

And whereas three years have elapsed since the date of said sales, and the said respective pieces of property have not been redeemed therefrom as provided for by law, nor either of them, nor any part thereof:

Now, therefore, I, Wilkins Warwick, treasurer of the county aforesaid, for and in consideration of the several sums of money to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these pres-
735 ents do grant, bargain, and sell unto the said Dexter Reynolds, his heirs and assigns, the several pieces of real property which were stricken off to him at the said sales, as hereinbefore described, to have and to hold unto him, the said Dexter Reynolds, his heirs and assigns, forever; subject, however, to all the rights of redemption provided by law.

In witness whereof I, Wilkins Warwick, treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name on this fifteenth day of July, A. D. 1868.

WILKINS WARWICK,
Treasurer.

STATE OF IOWA,
Cass County, ss:

I hereby certify that before me, Henry Temple, a notary public in and for said county, personally appeared the above-named treasurer, Wilkins Warwick, of said county, personally known to me to be the treasurer of said county at the date of the execution of the above con-
736 veyance, and to be the identical person whose name is affixed to, and who executed the above conveyance as treasurer of said county, and who acknowledged the execution of the same to be his voluntary act and deed as treasurer of said county, for the purpose therein expressed. Given under my hand and seal this 15th day of July, A. D. 1868.

HENRY TEMPLE,
Notary Public, Cass Co., Iowa.

(Endorsed:) Cass County. Treasurer of Cass Co. Tax-deed to Dexter Reynolds. Entered for taxation and filed for July 15th, D. D. 1868, at 5 o'clock, p. m. Recorded in book M, pages 335, 336, 337, 338, 339, 340, 341, & 342 of Cass County records. H. Temple, recorder.
(Also endorsed:) Filed May 27, 1874. George B. Corkhill, clerk. Fees 8.60. Paid.

737 And afterwards, to wit, on the 28th day of May, 1874, the same being of the May term, 1874, of said court, there appears in the records of the proceedings thereof in said entitled cause the following entry, to wit:

United States circuit court, district of Iowa, May term, 1874. Thursday, May 28, 1874.

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR., ET AL.

And now this cause coming on to be heard, Phillips & Phillips appearing for complainant, and J. R. Barcroft, esq., appearing for defend-

ant, Callanan, and thereupon this cause was submitted to the court upon the pleadings, and the following proofs offered therein, to wit:

Depositions of Isaac Dickerson, W. Waddell, & William Gardner, filed in this court July 8, 1873.

Depositions of E. W. Davenport, filed in this court May 28, 1873.

Deposition of John Warford, filed May 28, 1873.

Depositions of Cole, Noel, & O. D. Smalley, filed February 2, 1874.

Depositions of Wilkens Warwick, Isaac Dickerson, and William
738 Gardner, filed October 11, 1873.

Deposition of E. W. Davenport, filed in this court May 4, 1874.

Deposition of Isaac Dickerson, filed May 21st, 1874.

Deposition of J. J. Marshall, filed February 2, 1874.

Deposition of Howard James, filed February 2, 1874.

Deposition of Dexter Reynolds, filed October 9, 1873.

Deposition of I. N. Cornish, filed February 2, 1874.

Deposition of James Callanan, filed Oct. 15, 1873.

Depositions of A. S. Churchill, James W. Brown, Wilkins Warwick, and William Gardner, filed Oct. 11, 1873.

Also, stipulation to be used in evidence, filed May 24, 1874.

The several patents issued by the United States to complainant for each and every of the parcels of land in controversy, and which, it is conceded by defendants, vested the title from the United States in complainant, said patents being filed with the clerk of this court, May 27, 1874, being twelve in number.

739 Also, the following tax-deeds, to wit: Wilkins Warwick, treasurer of Cass County, to Orlando Meads, deed, dated Jan. 31st, A. D. 1767, filed for record in the office of the recorder of Cass County, Iowa, on 31st day of January, A. D. 1867, recorded in book J, pages 542, 543, 544, record of deeds of said county, & marked, filed this 27th day of May, 1874; and deed from same to same, same date, filed for record at the same time & place, & recorded in same book, pages 486, 487, 488, and mark' filed May 27th, 1874, by clerk of this court. Also, deed from said treasurer of Cass County to Dexter Reynolds, dated January 29th, 1867, filed in the office of the recorder of deeds of Cass County, for record, on the 29th day of January, A. D. 1867, & recorded in book J, pages 377, 378, 379, record of deeds of said county.

Also, deed of said treasurer to said Dexter Reynolds, dated January 29th, 1867, filed for record in the office of the recorder of deeds
740 of said county for record, on the 29th day of January, A. D. 1867, and recorded in book J, pages 385, 386, 387.

Also, deed of said treasurer to said Dexter Reynolds dated Jan. 29, 1867, filed for record in the office of the recorder of deeds of said county on the 29th of January, A. D. 1867, & recorded in book J, page 394, 395, of record of deeds of said county. Also, deed of said treasurer to said Dexter Reynolds dated January 29, 1867, filed for record in the office of the recorder of deeds of said Cass County, on the 29th day of January, 1867, & recorded in book J, pages 374, 375, 376.

Also, deed of said treasurer to said Dexter Reynolds dated Jan'y 29th, 1867, & filed for record in the office of the recorder of deeds of said Cass County on the 29th day of Jan'y, 1867, & recorded in book J, pages 435, 436, & 437.

Also, deed of said treasurer to said Dexter Reynolds dated on the 29th of Jan., A. D. 1867, & filed for record in the office of the recorder
741 of deeds of said Cass County on said 29th day of January, A. D. 1867, & recorded in book J, page' 368, 369, 370. Also, deed from

said treasurer to said Dexter Reynolds dated 29th day of January, 1867, filed for record in the office of the recorder of deeds of said county, on the 29th day January, 1867, & recorded in book J, pages 371, 372, & 373.

Also, deed of treasurer to said Dexter Reynolds dated January 29, 1867, filed for record in the office of recorder of deeds of said county, & recorded in book J, pages 449, 450, 451.

Also, deed from said treasurer to Orlando Meads dated Jan. 31st, 1867, filed for record in the office of the recorder of deeds of said county on the 31st day of January, A. D. 1867, & recorded in book J, pages 516, 517, & 518.

Also, three several deeds from said treasurer to said Dexter Reynolds, each dated first of May, 1872, each filed for record in the office of
742 the recorder of deeds of said Cass County, on the 2nd day of May, 1872, one recorded in book P, page 106; one in book P, page 107; & one in book P, page 108, record of deeds of said county.

Also, two deeds from the treasurer of said county to the said Orlando Meads, each dated May first, 1872, each filed for record in the office of the recorder of deeds of said Cass County, for record, on the 2nd day of May, 1872, one recorded in book P, page 109, & the other in book P, page 110, and each of said several deeds so offered are marked, filed by the clerk of this court of date May 27th, 1874.

Also, deed from said treasurer of Cass County to Dexter Reynolds, dated the 15th day of July, 1868, & filed for record in the office of the recorder of said Cass County, for record, on the 15th day of July, 1868, & recorded in book M, pages 335, 336, 337, 338, 339, 340, 341, & 342, & marked, filed by the clerk of this court May 27th, 1874.

Also, deed from Dexter Reynolds to James Callanan, dated Dec.
743 16, 1872, & filed for record in the office of the recorder of said county of Cass on the 14th day of March, A. D. 1873, & recorded in book Z, page 474, & marked, filed by the clerk of this court May 27, 1874.

Also, deed from Orlando Meads to James Callanan, dated Dec. 16th, 1872, & filed for record in the office of recorder of said county on the *on the* 14th of March, 1873, & recorded in book Z of deed-record, on page 475, and marked, filed by the clerk of this court May 27, 1874; the same being all the evidence offered by either party on such hearing.

And thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that the complainant, Michael Hurley, is, and was at the exhibiting of his bill herein, the owner of all and singular the lands in his said bill of complaint described, to wit, the north half of the northwest quarter of section nineteen, (19,) in township
744 seventy-four (74) north, of range thirty-five (35) west of the 5th p. m., Iowa, the same being in Cass County, Iowa; also the north half of the southwest quarter and the northwest quarter of section seven, (7,) and the north half of the northeast quarter and the north half of the northwest quarter of section three, (3,) and the south half of the southwest quarter of section seven, (7;) also the northwest quarter of section eighteen, (18;) all in township seventy-four (74) north, of range No. thirty-five (35) west of the 5th p. m., Iowa, in Cass County, Iowa; also, the south half of the southeast quarter of section eight, (8,) and the west half of the southwest quarter of section eighteen, (18;) all in township seventy-four (74) north, of range thirty-four (34) west of the 5th , Iowa, in Cass County, Iowa; also, the north half of
745 the northwest quarter of section four, (4,) in township seventy-seven (77) north, of range thirty-six (36) west 5 p. m., Iowa, and the west half and the southeast quarter of the northwest quarter and

the west half of the southwest quarter of section nineteen, (19,) in township No. seventy-six (76) north, of range No. thirty-seven (37) west of the 5th p. m., Iowa, in Cass County, Iowa; also, the southwest quarter of the northwest quarter section twenty-nine, (29,) and the southeast quarter of the northeast quarter of section thirty, (30,) all in township seventy-six (76) north, of range No. thirty-five (35) west of the 5th p. m., Iowa, in Cass County, Iowa; also the north half of the northwest *west* quarter of section twenty-five, (25,) and the northeast quarter of the northwest quarter of section three, (3,) in township No. seventy-five (75) north, of range No. thirty-six (36) west of the 5th p. m., Iowa;
746 also, the south half of the northeast quarter of section eleven, (11,) of township No. seventy-four (74) north, of range No. thirty-six (36) west of the 5th , Iowa. All of said lands being situated in Cass County, Iowa.

And that the several tax-deeds executed to Dexter Reynolds and O. Meads severally therefor, and recorded in the office of the recorder of deeds in Cass County, Iowa, and offered in evidence by defendant herein, and the several deeds executed by said Dexter Reynolds and the said O. Meads to defendant Callanan, for said lands, offered in evidence by defendant herein, are colorable only, and are hereby declared null and void, and to be henceforth no cloud upon complainant's title to any of said above-described lands; and it is further ordered and decreed that the defendants have not any right or title in or to any part or parcel of the aforesaid lands; and that the title thereto, and to
747 every part thereof, is hereby quieted in the said complainant, Michael Hurley, except that the said Callanan shall have a lien upon said land for any moneys that may be found due him upon the report of the master hereinafter ordered, for the purpose of taking an account of the taxes paid by the said Callanan and his grantors, Reynolds and O. Meads, severally, upon said lands. For the purpose of determining what amount is due defendant Callanan, if anything, thereon, this cause is referred to E. R. Mason, of Des Moines, as special master, to examine into the question of taxes paid by Reynolds, O. Meads, and Callanan, severally, and the dates of such payments by each severally, and make report to this court on the first day of the next term thereof. And upon the answer of deft., Calanan, treated by consent as a cross-bill, the court further orders, adjudges, and decrees that the title to the south half of the southeast quarter of section twenty, (20,) town-
748 ship seventy-seven (77) north, of range thirty-six (36) west of the 5th p. m., Iowa, is, and was at the filing of complainant's bill herein, fully vested in deft. James Callanan by virtue of tax-deeds therefor executed in pursuance of a sale thereof January, 1865; provided that nothing in this decree shall affect any right, title, or interest of said Callanan in any of said property under the sale thereof for taxes subsequent to the sale of January, A. D. 1864, & from which no redemption has been made, & as to the same the said master will make report to the court for its further order.

It is further ordered, adjudged, and decreed that the defendant James Callanan pay all the costs of this cause. And thereupon the said
749 James Callanan appeared, and in open court made application for the allowance of an appeal from the decree of this court herein to the Supreme Court of the United States. And it appearing that said property is of the value of more than two thousand ($2,000) dollars, such application is accordingly allowed, and the appeal-bond is fixed at the sum of five hundred dollars.

(Signed) JOHN F. DILLON, *Judge.*

The above decree presented to & examined by me.
J. R. BARCROFT,
Atty. for Deft.

(Endorsed:) Filed May 28, 1874. George B. Corkhill, clerk.

750 And on the 3rd day of June, 1874, the same being of the May term, 1874, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, May term, 1874.

WEDNESDAY, *June* 3, 1874.

MICHAEL HURLEY
vs.
JAMES CALLANAN. } No. 300. Eq.

By consent of parties, in open court, it is ordered that either party have leave to withdraw from the files, without leaving copies, of *of* all original deeds filed in evidence herein.

Appeal-bond.

751 In the circuit court of the U. S., district of Iowa.

——— TERM, 187 .

MICHAEL HURLEY
vs.
JAMES CALLANAN, JR.

Know all men by these presents that we, James Callanan, jr., as principal, and J. B. Stewart, of Des Moines, Iowa, as security, are held and firmly bound unto Michael Hurley in the penal sum of five hundred dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors, and assigns, firmly by these presents, dated this 8th day of September, A. D. 1874.

The condition of this bond is such, that whereas the said James Callan', jr., has appealed from the judgment or order of the circuit court of the United States for dist. of Iowa, made at the May term of said court, A. D. 1874, in a certain cause in equity, wherein Michael Hurley is plaintiff, and James Callan', jr., is defendant, to the Supreme Court of the United States:

Now, if the said James Callanan, jr., shall pay all costs and damages that shall be adjudged against him, and will satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the said supreme court may render, or order to be rendered, by the circuit court, not exceeding in amount or value the original judgment or order, and all rents or hire, or damages to the property during the pendency of the appeal, out of the possession of which the appellee is kept by reason of the appeal, and all costs and charges that may be awarded thereon by said supreme court, then this obligation to be void; otherwise to be and remain in full force.

(Signed) JAS. CALLANAN, JR., *Principal*,
By J. B. STEWART, *Security*.
J. B. STEWART. *Security*.

Approved this 8th day of September, A. D. 1874.
(Sgd.) GEORGE B. CORKHILL,
Clerk of said Court.

Also, I hereby acknowledge the authority of J. B. Stewart to sign my name to this bond.
(Sgd.) J. CALLANAN, JR.

(Endorsed:) Filed Sept. 8, 1874.
GEORGE B. CORKHILL, *Clerk.*

752 In the circuit court of the United States for the district of Iowa.

I, George B. Corkhill, clerk of said court for said district, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of all pleadings, depositions, papers, record-entries and decree in a certain cause adjudicated in said court, wherein Michael Hurley was plaintiff and James Callanan, jr., was defendant, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at my office in Des Moines, in said district, this 9th day of September, A. D. 1874.

SEAL OF THE CIRCUIT COURT OF THE U. S., DISTRICT OF IOWA.

GEORGE B. CORKHILL,
Clerk U. S. C. C., District of Iowa.

(Indorsed on cover:) Iowa C. C. U. S. No. 115. James Callanan, jr., appellant, vs. Michael Hurley. Filed 10th October, 1874.

IN THE

Supreme Court of the United St

TERM, 188

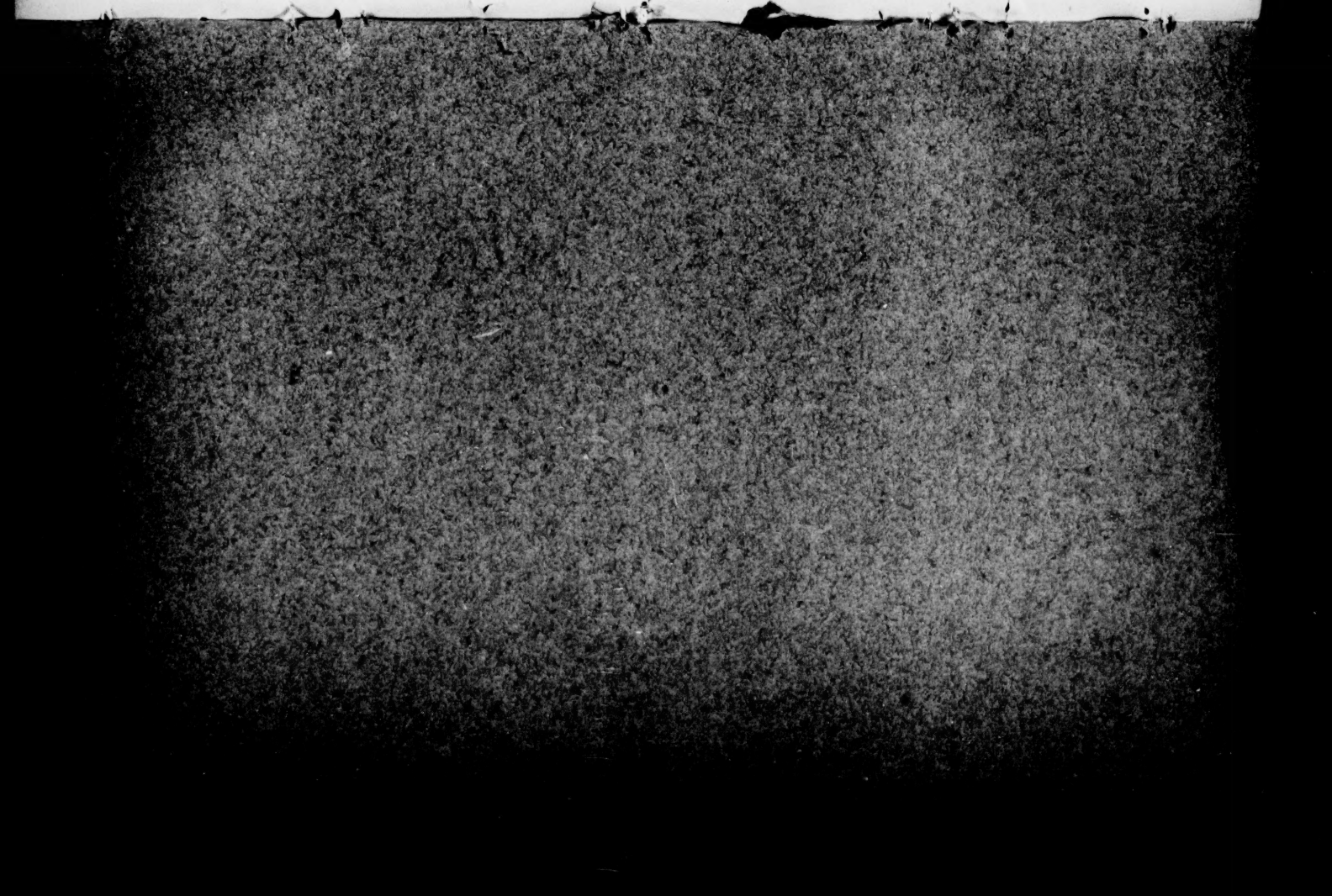
JAMES CALLANAN,
Respt. and Appellant,
vs.
MICHAEL HURLEY
Compt. and Appellee.

Appeal from the United S
Circuit Court for the
of Iowa.

ARGUMENT

GEORGE G. WRIGHT,
Counsel for Resp

J. E. WILLIAMS, Legal Printer, Des Moines, Iowa.



IN THE

SUPREME COURT

OF THE

UNITED STATES.

JAMES CALLANAN,
Respt. and Appellant,
vs,
MICHAEL HURLEY.
Compt. and Appellee.

Appeal from the United States Circuit Court for the District of Iowa.

STATEMENT.

This controversy involves the title to some twelve hundred acres of land in the County of Cass, in the State of Iowa. Appellee (and complainant) relies upon his patent title from the United States, and seeks by his bill in equity to set aside and have declared invalid, the title of appellant (and respondent,) who holds under certain tax deeds, the lands having been sold for the payment of taxes, which taxes, it is admitted, were delinquent. Appellee owned the lands—was bound in law to pay the taxes—failed year after year to do so—the lands were finally sold,—he failed to redeem the same and the parties under

whom respondent claims, took their deeds as they were entitled to under the law, and these deeds, and the title thereunder, it is alleged, are clouds, without right or legal warrant upon complainants title, and hence this proceeding.

By the original bill it is set up that complainant is the real owner of all the estate and interest created by the pretended tax sales,—that by virtue of the laws of the State of Iowa the tax deeds under which respondent claims, are presumptive evidence of the regularity of the proceedings on which they are severally founded, and on their face purport to divest complainants estate in and to said lands,—that said conveyances are however void, for that said lands were never sold for the non-payment of taxes, as in said deed recited—for that no taxes were levied upon the said lands for the years for which they were pretended to be sold—for that said taxes, if such they were, never became delinquent—for that there was no person authorized to receive payment of taxes—for that there was no warrant for the sale of said lands—and for that no sale ever took place—that certificates were issued to the parties under whom respondent claims, reciting the sale of the lands contrary to the truth, under and based upon which the said tax deeds were made.

In an amendment to the bill it is charged that said lands at the time of the pretended assessments and levies, were not subject to taxation,—that Reynolds and Meade (under whom Callanan claims) unlawfully confederated and combined with said (Callanan) to prevent competition at the sale of lands for taxes in said County of Cass,—that it was agreed that Reynolds and Meade should invest in tax sales at that time (1864) to the amount of $12,000,—that Meade should take the delinquent lands in the northern part and Reynolds those in the southern part of said County. That said defendants (meaning, as we suppose, Callanan, for neither Reynolds nor Meade are parties

herein,) appeared by their agent on the day fixed for the sale of said lands, and directed the Treasurer to issue certificates to said Meade and Reynolds, pursuant to and in accordance with their arrangement and unlawful combination,—that said Treasurer, without having sold said lands to either of said parties, issued certificates accordingly to said Meade and Reynolds, under which they afterwards obtained deeds, of all which said Callanan had notice. He also alleges that from all sales made subsequent to January 1864, he has redeemed.

The answer of Callanan, the only real party defendant, denies *fully* and *explicitly* each and every matter in said bill contained forming by *possibility* any predicate for the relief asked,—denying all fraud, all combination, all notice on the part of Callanan, and setting up and claiming under valid and *fona-fide* sales of the lands for taxes and deeds including deeds from the purchasers to him, which it is insisted vest the title in respondent, anything in said bill and amendment contained to the contrary notwithstanding. It also appears by the answer that at the time this suit was commenced respondent had a contract for the purchase of these lands from Reynolds (Meade never had any interest in any of them—nor did he claim any—his name being used by Reynolds who furnished all the money,)—that he (respondent) had then paid a large portion of the price agreed upon, and that before the answer to the amendment to the original bill he had paid the entire sum and had a full title.

The answer also sets up that complainant had not at the time he commenced his suit, nor had any one for him, paid all the taxes, or any part thereof due and owing upon said lands.

Upon the issue thus joined a large amount of testimony was taken and upon the final hearing there was decree in favor of complainant from which respondent appeals.

POINTS AND AUTHORITIES OF APPELLANT.

FIRST. That the case was not correctly decided on its facts, and is in conflict with the ruling of the Iowa Supreme Court upon this testimony.

Phelps vs. Meade, 41 Iowa, 470.

SECOND. That the tax deed, as against anything found in the record or testimony, or as to all the defects claimed, is conclusive and passed the title.

Iowa Rev. 1860, ss 763, 765-6-7, 733, 779, 781, 784.
M'Cready vs. Sexton, 29 Iowa, 356.
Allen vs. Armstrong, 16 ib. 508.
Clark vs. Thompson, 37 ib. 536.
Leavitt vs. Watson, ibid. 93.
Playter vs. Cockran, ibid. 258.
Smith vs. Easton, ibid. 584.
Rima vs. Cowan, 31 ib. 125.
Hurley vs. Powell, ibid. 64.
Hurlburt vs. Dyer, 36 ib. 475.
Negus vs. Yancy, 23 ib. 417.
Hill vs. Wolfe 28 ib, 577.
Shaw vs. Orr, 30 ib. 354.
Bulkley vs. Callanan, 32 ib. 461.
Love vs. Welch, 33 ib. 192.
Ware vs. Little, 35 ib. 234.
Boardman vs. Bourne, 20 ib. 134.
Stewart vs. Corbin, 25 ib. 144.
Mulligan vs. Hintarger, et. al. 18 ib. 171.
Martin vs. Cole, 38 141.

Lorain vs. Smith, 37 ib. 67.
Phelps vs Meade, 41 ib. 470.

THIRD. Cannot impeach the deed and its recitals by parol testimony.

Bisco vs. Coulter, 18 Ark. 438.
Lamb's Heirs vs. Gillett, 6 Mc'Lean 365.
Mc'Call vs. Turner, 4 Watts 351.
Barney vs. Lyon, ibid. 363.
Jackson vs. Dailey, 5 Wend. 526.
Hunneman vs. Fire Dist. 38 Vt. 140.

FOURTH. Powers of officers,—validity of the deed,—what defenses cut off,—and constitutional power;

Laird vs. Hersted, 12 Harris, Penn'a. 45.
Wakely vs. Nichols, 16 Wis. 588.
Smith vs. Cleveland, 17 ib. 556.
Burrows vs. Bushford, 22 ib. 103.
Knox vs. Cleaveland, 23 ib. 245.
Gwyne vs. Neiswinger, 18 Ohio, 406.
Wood vs. Chapin, 13 N. Y., 515.
People vs. Mitchell, 35 ib. 551.
People vs. Draper, 15 ib. 352, 545.
Ross vs. Whitman, 6 Cal. 351.
Commonwealth vs. Drury, 15 Gratt. 1.
Pearham vs. Decatur County, 9 Ga., 352.
Tyler vs. People, 8 Mich. 320.
Hinman vs. Pope, 1 Gilm. 141.
Akens vs. Hinman, 2 ib. 452.
Mulligan vs. Hintrager, 18 Iowa, 171.

FIFTH. As to fraud, combination and being no sale;

Swartz vs. Frunk, 9 Western Jurist, 412.
Martin vs. Cole, 38 Iowa, 141.

SIXTH. Callanan is an innocent party and these alleged irregularities cannot impeach his title :

Van Shaack vs. Robbins, 36 *Iowa*, 201.
Sibley vs. Bullis, 40 *ib.* 429.

SEVENTH. No seal or warrant necessary to confer power to sell. The law gives the power and confers the authority ;

Parker vs. Sexton, 29 *Iowa*, 421.
Johnson vs. Chase, 30 *ib.* 308.
Hurley vs. Powell, 31 *ib.* 64.
C. R. & M. R. R. Co., vs. Carroll Co., 41 *ib.* 153.

EIGHTH. Appellee estopped from asking to set aside these deeds until he pays taxes ;

Iowa Rev. 1860, *ss.* 784.

ARGUMENT.

This case is before the Court to be heard *de novo*. No presumption obtains, therefore, in favor of the correctness of the decree below, except such as attaches, by way of presumption that a Judge so learned and able, has possibly, or probably reached a correct conclusion. No one goes before the writer of this argument in his admiration for this thoughtful and painstaking Judge. We know that, as his time and engagements will allow, he seeks most faithfully to know the law and correctly rule upon the many cases crowding upon him. But he is not infallible. He does make mistakes, It cannot well be otherwise in view of his great, onerous and pressing duties. He may not make many, but he does make some. We do most *confidently and earnestly* submit that such mistake has intervened in this instance, a mistake which never would have occurred if the requisite time could have been found or allowed to fully examine all the facts, and the law bearing upon them. As it is, our only remedy is to appeal to this Court for the correction of this most unjust and unsupported decree. We come with more than usual confidence, since in the light of the Statutes of Iowa, as construed over and over again, by the highest Court of that State, it would seem that appellee was without a leg upon which to stand.

Judge Dillon, in ordering the decree below, setting aside the title, did not, in writing at least, advise the parties of the ground for his conclusion.

We labor under the disadvantage therefore, being for the re-

spondent who appeals in an equity case, of having to *guess*, somewhat, at the ground upon which complainant, under the testimony, obtained this decree for relief. We probably, however, do not much misjudge, when we assume that it will be insisted that we took no title under the tax sale for the reason that there was *no sale in fact*. It will hardly be claimed that the lands were not subject to taxation, nor that they were not assessed,—that the tax was not levied—nor that deeds were not made—nor that there was not power to sell, for there is not a particle of evidence to the contrary. The whole case will hinge, as we suppose, upon the fact, question, whether there was or was not a *sale* of the lands, as set out in the deeds under which we claim; and herein, in this connection, we conjecture (and we can only conjecture in advance of appellees argument) it will be insisted that the Treasurer did not *offer the lands for sale*, that they were set apart to the agent of Reynolds and Meade under some secret arrangement,—that there was no opportunity for competition at said sale, and that the testimony, taking it altogether, shows an entire absence of such open public offering of said lands as is contemplated and required by the Statute and the general principles governing tax sales.

I.

This case was decided in May 1874. Since that time the validity of this same sale, in all its parts and features, *upon the very testimony now before this Court* has passed under the review of the Supreme Court of Iowa. That Court, after a most elaborate examination of all the facts and the law applicable, dismissed complainants bill (*based upon the same grounds as in this case*) AND UPHELD THE TAX TITLE. If the case referred to had been ruled by the highest judicial tribunal of the State before his honor, Judge Dillon passed upon that, now before this

tribunal, of course his path would have been plain, as he could and would not have hesitated to follow the Iowa Court. And now this Court, having before it such decision, giving a construction, not only of the State statute and reviewing so very recently, all the decisions of that State upon this subject, but which passed upon *the very facts, the very testimony now here*, we say, this Court, we doubt not, will gladly accept this adjudication as settling this controversy, though it leads as it must to a different result from that reached in the Circuit Court, for it would be most anomalous and in the face of the repeated and well settled rules and adjudications of this Court, to have one rule of decision and property in the State and another in the Federal tribunals. And fortunately this question comes for final settlement at a time when there are no conflicting decisions in the State tribunals—when there can be no pretense that any property or other rights have been settled or acquired under any other line of decisions. This Court is simply called upon to follow, as it will, we know, most unhesitatingly, because this is the law and the rule, and because also, the case cited is most manifestly right, the construction given to the statutes of the State, as applied to the *very case and facts now before it.*

The case to which we refer, is *Phelps vs. Meade, et. al.* 41 *Iowa*, 470. (This volume is but just published. If it should not be accessable to the Court, we have a certified copy of the opinion which we will gladly furnish your Honors.)

Beyond this we can hardly deem it necessary for us to go at this time, and especially when we repeat (as will be seen from the first sentence of the opinion of Cole, J., in the case cited) that, that case by stipulation of parties was heard in the District and Supreme Court of Iowa upon the evidence taken in the case now before this Court, and found in this record, involving the validity of this very tax title. That case is relied upon

with confidence, the more so, since it collects the leading decisions in the Iowa Courts giving a construction to our revenue statutes, the very statute under which this sale was made.

II.

And yet a brief reference to the line of decisions in Iowa on this statute and the principle involved may not be deemed quite out of place.

The duty of the citizen to pay his tax and pay it promptly is as clear and undoubted as is the power of the State to levy such tax. If in the discharge of this duty he fails, then follows the clear right and duty of the State to resort to coersive remedies. This is usually provided for by authorizing a sale of the property upon which the burden is imposed. In Iowa, prior to 1860, as since, we have had such statutes. Before that time the defects in our Legislation were such that the *substance* was sacrificed to form. Parties defied all efforts to enforce payment of their taxes by the State—to allow taxes to become delinquent, and especially by non-residents, was the rule rather than the exception, since the courts, as the law then stood, felt constrained to so hold as that no one would buy at these sales, and our revenues, year after year, were uncollected and uncollectable. As we could not enforce payment, so it followed that the tax paying citizen was compelled to be additionally burdened, for the levy was increased from year to year. Under such circumstances it was that the act of 1860, which governs this case, was passed, and under which our revenues have ever since been closely and promptly collected. The law is strin-

gent, but it was an absolute necessity, and so admirably has it worked, now over sixteen years, that there has been no thought of changing it; for the honest tax payer is benefitted, and the careless and indifferent are held to the discharge of a plain duty, the duty of paying their taxes. And since ample time is given to pay taxes before, and to redeem after sale, no one at all diligent or mindful of duty, need lose his property or suffer the least wrong. Some of the provisions of the statute may here be stated, such as are deemed necessary to show the correctness of the ruling of our Supreme Court and the error of the court below in the present case.

Sect. s, 763, (Rev. 1860.) and following, provide for offering for sale by the County Treasurer at his office of all lands, &c., on which taxes remain delinquent, —for the notice of sale,—for his charges in addition to the taxes, and then *Sec. 765* prescribes that

"He shall on the day of sale * * * offer for sale separately each tract or parcel of real property, advertised for sale, on which the taxes and costs shall not have been paid."

"The person who offers to pay the amount of taxes due on any portion of land * * " for the smallest portion of the same shall be considered the purchaser." *ss. 766.*

" The Treasurer shall *continue* the sale from day to day as long as there are bidders, or until the taxes are all paid. " *ss. 767.*

" After all has been offered if any portion of the lands advertised remains unsold, the Treasurer is to *adjourn* the sale." *ss. 773.*

The purchaser is entitled to a certificate of purchase, describing the property and the amount of tax, &c., *ss.* 777, and redemption may be made within three years. *ss.* 779.

After the expiration of three years the purchaser is entitled to a deed if there has been no redemption. *ss.* 781.

This deed vests in the purchaser all the *right, title, interest and estate* of the former owner in the land conveyed, and shall be *presumptive* evidence in all controversies and suits in relation to ths rights of the purchaser to the land thereby conveyed of the following facts:

1. That the property was subject to taxation.
2. That the taxes were not paid before sale.
3. That the property conveyed had not been redeemed at the date of the deed.

And shall be *conclusive* evidence of the following facts:

1. That the property has been listed and assessed.
2. That the taxes were levied according to law.
3. That the property was advertised for sale in the manner and for the length of time required by law.
4. That the property was sold for taxes as stated in the deed.
5. That the grantee named therein was the purchaser.
6. That the sale was conducted in the manner required by law.
7. That all the prerequisites of the law were complied with by all the officers * * * except in regard to the *three* points named in this section where the deed shall be *prima facie* evidence only.

And in all controversies involving the title held under such tax deed executed substantially as required by law by the Treasurer, the person claiming title adverse thereto, in order to defeat the same, *must* show, either that said property was not subject to taxation, or that the taxes had been paid before sale, or that the property had been redeemed from the sale according to law. * * And no person shall be permitted to question the title under the deed without first showing * * *that all taxes due upon the property have been paid. ss. 784*

These sections, it will be seen, are very clear and explicit as to the force and effect of the Treasurer's deed, and under this statute the rulings in Iowa have been uniform that, unless it appeared either that the property was not subject to taxation, or that the taxes had been paid before sale, or that the property was redeemed before the *date* of the deed, the deed was *conclusive and passed the title.*

In support of this we might cite many cases. Here are a few of the more pertinent ones, with occasional extracts therefrom to show their applicability:

McCready vs. Sexton, 29 Iowa, 356.

"As to the time and manner in which they (*assessment, levy and sale, the only fundamental steps*) shall be done, the discretion of the Legislature is absolute and supreme and cannot be judicially controlled or interfered with. Having the right to prescribe the manner it may also rightfully provide that a failure to comply with its directions as to the manner shall not defeat the end; or that no person shall question the manner, or that any subsequent act or fact shall be either *prima facie* or conclusive evidence that the law as to the time and manner was complied with."

Allen vs. Armstrong, 16 ib. 508,

Where his honor, Judge Dillon, then a member of the State Supreme Court, de-

livered the opinion, to which we invite the careful attention of this court and from which we quote as follows:

"The State has the taxing power. No government can exist without it. The whole property of the State is subject to the burden, which is in the nature of a first and paramount lien upon it, and it is pledged to contribute proportionally to defray the expenses requisite to support and carry on the government. Where property is taken in the due and valid exercise of the power to tax, which inherently resides in every government, the owner is not deprived of it 'without due process of law' within the constitutional meaning of these words.

"The Legislature might provide for the sale of property for delinquent taxes, on a given day, without requiring any notice, and hence they may provide, as they have done, in cases of ordinary sales on execution by Sheriffs. (*Rev. s. 3312*) That the omission to give notice, while it subjects the officer to damages, shall, nevertheless, not affect the validity of the sale, as it is competent for the Legislature to declare that a notice in all respects regular, is not essential. So it is competent for it to say that a deed shall, in the purchaser's favor, be conclusive evidence of due notice.

"The clerical mistake of the year and the other alleged defects in the notice of sale, being simply irregularities in the exercise of the power, and not a vital part of the power itself, fall within the principle just stated; and it is clearly within the power of the Legislature to declare that they are not essential, for such, in effect, is the provision that the deed shall be conclusive evidence of their due performance.

"The same principle applies to the objection that the assessor was not qualified when he made the assessment in question. It is not denied that he was the assessor, *de facto*. He was acting under color of office. The law, in so many words (*s.* 786) declares that his acts shall have the same validity as if he were an officer, *de jure*. This concludes the matter. Such a provision is not unusual, and without any such provision it is an every day matter where rights of the public or third persons are concerned, to treat acts of officers, *de facto*, as valid. *Ex Parte Strahl. Ante; Blackwell*, 123. At all events the statute is clear. Its meaning is unmistakable and we are bound to give it effeet, so far as it does not violate the constitutional rights of the citizen or property owner."

Clark vs. Thompson, 37 *ib.* 536.

"The deed is conclusive evidence of compliance with the law in respect to the *time* of sale and cannot be defeated by other evidence contradicting such presumption. Following *Mc'Cready vs. Sexton*, 29 *Iowa*, 356."

Leavitt vs. Watson, 31 *Iowa*, 93.

"Where bids were handed in on *paper to* the Treasurer, and if, there being no other bids for the same land, he entered the same as sold without further offering,

though the manner of the sale was irregular, yet it was a sale in fact, and the sale was good."

Playter vs. Cockran, 37 *ib.* 258.
Smith vs. Easton, *ib.* 584.

Rima vs. Cowan, 31 *ib.* 125.

The deed is conclusive evidence of compliance with the law in all respects as to the *time* and place of sale, and *cannot be defeated* by the other evidence contradicting such presumption.

Hurley vs. Powell, *ib.* 64.

Hurlburt vs. Dyer, 36 *ib.* 475.

The misrecital in a tax deed of the *date* of the sale does not render the sale invalid.

Negus vs. Yancy, 23 *ib* 417.

Neglect of Treasurer to note the sale on his sale book at the proper day cannot affect the sale or the right of the purchaser. Followed in

Hill vs. Wolfe, 28 *ib.* 577.
Shaw vs. Orr, 30 *ib.* 354.
Bulkley vs. Callanan, 32 *ib.* 461.
Love vs, Welch, 33 *ib.* 102.

Ware vs. Little, 35 *ib.* 234.

In this case it was held that though the tax deed misrecited the date of the sale it was nevertheless good, for that this did not vitiate it; and so held in the case of *Hurlburt vs. Dyer*, *Supra.*

Boardman vs. Bourne,20 *ib.* 134.

Where it is held, and all the other cases concur in this, that the deed is *conclusive* evidence that the property *was sold for taxes as therein stated* and that the sale was conducted in the manner required by law.

Stewart vs. Corbin, *25 ib. 144.*
Mulligan vs. Hintrager, *18 ib. 171.*
Martin vs. Cole,*38 ib. 141.*
Lorain vs. Smith, *37 ib. 67.*

Phelps vs. Mead, *41 ib. 470.*

If there was a *bona fide* sale in substance or in fact, the tax deed is *conclusive* evidence that it was done at the proper time and conducted in the proper manner.

And that these cases giving a construction to this statute are not without support in other States, we cite the following authorities bearing upon the question or principle involved.

Cannot impeach the truth of the deed and official record by the testimony of the tax collector.

Bisco vs. Colton, 18 Ark. 438.

And see *Lamb's Heirs vs. Gillett, 6 Mc'Lean 365.*

Parol evidence inadmissible,

Mc'Call vs. Lanmar, 4 *Watts*, 351.
Burns vs. Lyons, ib. 363.
Jackson vs. Daily, 5 *Wend.* 526.
Hunneman vs. Fire Dist. 37 *Vt.* 40.

And as applicable to the powers of these officers and the validity of such deeds, see

Laird vs. Herstead, 12 *Harris*, (*Penn.*) 45.
Wakely vs. Nichols, 16 *Wis.* 588.
Smith vs. *Cleveland*, 17 *ib.* 556.
Burrows vs. *Bushford*, 22 *ib.* 103.
Knox vs. *Cleveland*, 23 *ib.* 245.
Gwyne vs. *Neiswinger*, 18 *Ohio*, 406.
Wood vs. *Chapin*, 13 *N. Y.*, 515.
People vs. *Mitchell*, 35 *ib.* 551.
People vs. *Draper*, 15 *ib.* 352 *and* 545.
Ross vs. *Whitman*, 6 *Cal.* 351.
Commonwealth vs. *Drury*, 15 *Gratt.* 1.
Pearham vs. *Decatur Co.*, 9 *Ga.* 352.
Tyler vs. *People*, 8 *Mich.* 320.
Hinneman vs. *Pope*, 1 *Gilm.* 141.
Akers vs. *Hinman*, 2 *ib.* 452.

III.

But as to the *conclusiveness* of the deed against any possible attack based upon the most loose and indeterminate evidence found in this record, we certainly need not say more. Suppose this court should be satisfied that the person making the

bid and purchase was *not* at the place of sale on the day recited in the deed, and suppose appellee can be allowed to contradict the recital in the deed and show that the sale took place at another time (which we utterly deny), yet as it appears that a sale *was made in fact* though it may be at a subsequent date, the sale *continuing* from day to day (not an adjourned sale), then it only follows that the act of the Treasurer (for which he had much and reasonable warrant,) see *Sec.* 767, *Rev.* 1860 *Iowa*, in dating all his deeds for that *continued* sale as of the first day, according to his uniform practice in all his twenty sales, for he had been long in office, we say it only follows that this was at most but an irregularity, and that it in no manner vitiated the sale, the deed or the title. The attempt by the testimony to show that there was no sale, or that there was fraud, most signally fails. Complainant assumes such fraud and such want of sale, and it is for him to satisfy the court of these facts by a preponderance of evidence. Instead of doing this he fails entirely, and we, on the other hand, showed most conclusively, what we need not have done, that there was a fair, public and open sale of those lands. And at the hazard of needlessly prolonging this argument, we will quote from the testimony, and all there is of value on this point, as follows :

Deposition of Davenport, folio 84, p. 21 printed ab. pg., 15 original ab.

"The tax sale was held January 4, 1864, in the Treasurer's office, but can't remember how it was conducted." He says Warford came there to make purchases for Reynolds, but does not remember whether it was on the 4th of January 1864, or before or after. (Trans. p 21, ab 15.) "Warford made purchases for both Meade and Reynolds, but I do not remember how it was done." (Trans. 21.) And all his direct examination is to the same import. He does not remember anything

about it, which is very natural for it was over ten years before. This witness also says he purchased lands for taxes at said sale for himself and for W. S. Wheeler and M. D. Bartlett, who were his friends. (Trans. 24 and ans. 32.)

On his CROSS-EX. he says:

"Warford was at said tax sale, to buy land and did buy it. "That I also bought in land and *I certainly thought this* "*sale was correct* or I should not have made purchases for my- "self or friends. I did not know at the time of anything being "done which I supposed to be wrong. I think it was designed "to have a fair sale. I know of no one wanting to bid that "did not have a chance." (Page 18 ab.)

Isaac Dickerson testifies that he was "County Treasurer from "1857 to 1866 and conducted the tax sale in question." Does not remember just how it was conducted, but it was his "*intention to conduct it according to law.*" (Trans. page 35.) "Sale "opened on January 4th 1864, and continued right along under "that date 'till it was closed. Certificates of sale were made "out at once, after the sale and continued as fast as they could. (Trans. p. 36.) "The land was marked off on the sales book, "that was sold to D. Reynolds and O. Meade, and certificates "delivered to John Warford, his agent. (Trans. page 38.) Same as to O. Meade's sale. (Trans. page 38.) And all paid by John Warford, agent for Reynolds and Meade. (Trans. p 39.)

Part of the purchase money was paid at the time of sale and balance when certificates were delivered. (Trans. p 39.) Some money was paid down before he entered the land on the sale book. (Trans. p 40.) Sale was conducted by entering up the bids that were received and placing them on the tax list, and then on the register of sales, and then entering them on certificates. (Trans. p 33.) "The bids were made by parties say- "ing they would take the land and pay the taxes. (Trans. p.

53.) "Sales were made under my supervision." (Trans. p 54.) "I was in the office and it was my business to be around and I "understood what was going on." (Trans p 55.) "Sale opened "by going to Court House door and saying: 'O! Yes! O! Yes! "the tax sale is now opened.'" (Trans. p 55.) "I conducted "the tax sale personally. I received the bids." (Trans. p 57.) "I was County Treasurer and what was necessary to be done I done or had it done by my authority." (Trans. page 57.

On his *Cross-Examination* he says he has been Treasurer of Cass County 9 years and has held 15 or 20 tax sales. "I, as Treasurer of Cass County, sold to Reynolds and Meade, through John Warford, the land that is entered in the sale book as sold to them." (Trans page 50.) "Said sales were made in my office and made *publicly and openly and after public outcry.*" (Trans page 50) "Said sale was open to all parties." (Trans page 50.) "I did not do anything to prevent a fair open sale, and I do not know of anything being done to anyone to prevent a fair, open, public sale. (Trans page 50.) I was engaged in selling land and knew the value of land. (Trans. page 50.) At time of sale of said land, it was worth from 75 cents to $1,00 per acre." (Trans. page 50.)

He corrects direct int. 85, as to what his clerk, E. W. Davenport did, by saying that "Davenport made the certificates, but not the sale." (Trans page 50.)

In another deposition of this same witness, transcript page 158, he says: "the sale was managed by publicly offering the lands, and marking up the lands on the tax list, when it was bid off. (Trans page 158.) It was always my custom to enter up all the lands sold at the general sale as of the date it commenced, until a regular adjournment. I thought this was the *right* way. Sale was *continued* from day to day under date of commencement. If I had made a different date the record would have

shown a different sale. (Trans page 159.) I regarded all sales made at that sale as one sale, although it might continue from day to day for a number of days." (Trans page 159.)

"Sales were not all made in one day, but all carried out under one date. My understanding is it was right and proper to enter up sales under the date the sale commenced, even if the sale did continue for several days. (Trans page 159.) My recollection is that as lands were sold I checked them off from the tax list, and my clerk entered them up in the register. (Trans page 161.) The lands sold to D. Reynolds and O. Meade were *called off and publicly offered.* (Trans page 163.) Usual manner of making bids was by the purchaser saying he would take the land for the amount of taxes. (Trans page 164.) The land was sold by being publicly offered and purchaser saying he *would take the land and pay the tax, cost and interest for the land and then it was checked off.*" (Trans 168.)

"Was not entered on sale book as sold, but was entered on tax book; entered with extentions afterwards. (Trans page 168-9.) I called the land off in rotation and as Warford wanted it he took it. He passed all, when taxes were delinquent for more than three or four years. (Trans. page 171.) It was done publicly. Anybody who saw proper could bid on the land, and anybody that wished to could have knowledge what Warford and I were doing." (Trans page 173.)

Isaac Dickerson, second deposition. (Trans page 138.) "This land had been advertised before for sale, and not sold for want of bidders, and adjourned from month to month, and year to year until January 4th 1864. (Trans page 138.) And this land was sold under both an adjourned and original sale. (Trans page)

William Waddle's Deposition, filed July 8, 1873, for plaintiff, testifies: "I was clerk of Board of Supervisors of Cass County

in January 1864. (Trans page 53.) I was present at the tax sale of January 4th 1864, made by the Treasurer Isaac Dickerson. (Trans page 53.) I attended said sale and made up the record afterwards. (Trans page 53.) Said lands I think were struck off to Reynolds and Meade that day. (Trans page 53.) I was present when the tax sale was opened." (Trans. page 53.)

Crosz-Examiantion.

"I was in Treasurer's office to attend said sale. (Trans page 55.) Sale was opened by Treasurer. (Trans page 55.) Treasurer commenced calling off delinquent land from the tax list and, as parties said they would take them, marked them as sold on the tax list. (Trans page 55.) Sale so continued after January 4th 1864. (Trans page 56.) I do not remember what I did. I think on January 4th I checked on the advertised list the land sold. I think after that I assisted in checking the land sold on the plats. I think I marked some as sold on the tax list, opposite each tract sold. (Trans page 56.) The Treasurer called off each piece separately as it was described in the tax list. (Trans page 56.)

"In calling off the land and in striking it off by him to the different purchasers, the Treasurer did it in a loud voice so that all could hear him." (Trans. page 56.)

"John Warford's business there was to see about buying tax land for Dexter Reynolds and O. Meade. (Trans, page 56.) Warford was there two days." (Trans. page 56.)

John Warford's Deposition, filed May 3, 1863, testifies: "I bought land in Cass County, in January, 1864 at Treasurer's tax sale in the name of D. Reynolds and O. Meade. (Trans. page. 109) This was done under directions of D. Reynolds.

(Trans. Page. 109) He directed me to purchase part in name of D. Reynolds and part in name of O. Meade. Reynolds paid for it all. (Trans. page. 109) No other directions from any one. (Trans. page. 109–10) I was directed to purchase only such land as was not delinquent over three years, and to be careful and see that the purchase was correctly made. (Trans. page 110.) Reynolds only wanted such land as would be likely to be redeemed, and if delinquent over three or four years, thought it would not be. (Trans. page 110.) I attended said tax sale in person, purchased land in name of D. Reynolds and O. Meade. (Trans. page 110.) The sale of said land was made by Isaac Dickerson, the Treasurer, *by calling off the lands publicly as they were advertised, and when so called they were bid in as called.*" (Trans. page 110.)

Cross-Examination:

"Purchased land to the amount of about $7,000, for both Reynolds and Meade. (Trans. page 116.) The Clerk of Supervisors, whose name is Waddle, was present at the sale. (Trans. page 116.) When I made a purchase, I made a mark opposite the piece of land on the advertised list. (Trans. page 117.) Amount of tax on each piece, thirty or forty cents an acre on an average, *or more.* (Trans. page 119.) The Treasurer read off the land and when so read off I said I would take the piece so called." (Trans. page 119.)

And thus it will be seen that the only witness, in the least tending to sustain appellee, is Davenport, who was a clerk in the Treasurer's office; who speaks of his recollection of a transaction occurring ten years before; who evidently knows nothing; whose memory is however attempted to be sharpened by repeated appeals, manipulations and examinations, but who after all shows conclusively that there was nothing to lead him

specially to remember all or any of the circumstances of the sale, and whose testimony should be received, as should all such testimony, if received at all, with the utmost caution, and particularly so where he is not sustained, but is in fact contradicted by every other witness. And it will be observed that he does not say there was no sale, but only that he does not remember it—Of course he does not, and why should he after the lapse of ten years? If, upon the testimony found in this record, these deeds can be set aside and this sale held invalid, then all our State decisions are to be overruled, the law is a delusion and a snare, and upon the merest supposition of fraud or wrong, the party purchasing loses the benefit of a legitimate investment and the defiant delinquent gets the full advantage of his own delinquency and disobedience of law.

But we will not comment upon the testimony further at this time, reserving the task in answer to any argument which appellee may make or attempt to set up therefrom.

But see on this subject the following authorities:

Swartz vs. Frunk (*opinion by Judge Dillon,*)
9, West. Jurist 412.
Martin vs. Cole, 38 Iowa 141.

IV.

We claim, however, in the next place, that Callanan, the only respondent here, is protected as an innocent holder of this property, and is not to be affected by any possible irregularity or fraud—which fraud and irregularity, we most persistently

and earnestly insist has not been shown, nor the semblance of it, nor by any of the matters attempted to be shown in this case.

The case of *Van Shaack vs. Robbins, 36 Iowa 201*, is conclusive on this point. We shall not extend this argument by quoting from the case or giving other authorities. This is in point and is all sufficient. See, however, fully supporting this point,

Sibley vs. Bullis, 40 Iowa, 429.

V.

Should it by possibility be claimed that for some of the years for which the lands were sold there was no *seal* attached to the tax duplicate, we answer that this makes no difference, for a tax warrant is not an essential element in a tax sale and its form or execution even is immaterial.

Parker vs. Sexton, 29 Iowa 421.
Johnson vs. Chase, 30 ib. 308.
Hurley vs. Powell, 31 ib. 64,

In *C. R. & M. R. R. Co., vs Carroll County, 41 ib. 153*, it is held, following the well settled rule on this subject, that the power of the Treasurer to sell is *derived from the Statute* directly, and it is immaterial whether the tax warrant has a seal or was issued by order of the Board of Supervisors, or even whether there was a tax warrant at all.

VI.

And now, when we remark in conclusion, that there is no

pretence that complainant or any one for him, has paid all or any portion of the taxes for which this property was *liable*, and for which, as we have shown, it was *sold*,—the taxes *due*, and that the statute (*ss. 784*,) expressly provides that he shall do this before he can be *permitted to question the title acquired by the Treasurer's deed*. We say when this fact is remembered, we see how utterly without equity or right to a standing in a court of equity he is, even if we admitted all that he might else claim. The law intended to enforce the collection of the revenue. It goes upon the plain rule of equity—laid up among the fundamentals—that a party shall pay to the public what he owes before he asks equity or law to give him relief. And least of all should one who has failed to comply with this plain provision of the statute be heard to complain where he positively refused and neglected, year after year, to pay his, taxes—neglected his property—treated it as of no value, and who, after others have, as allowed and provided by law, invested their money therein, and after the property has, contrary to his expectations, so advanced in value as to elicit his attention, now comes into court upon a most baseless claim and asks that he may be relieved from the consequences of his neglect of law, duty and the plainest principles of equity. The advance in the value of the land seems to have quickened his desire to regain it, but not opened his purse strings to comply with his duty to respondent, or to meet the just demands of the State upon him. We stand and with confidence upon our legal rights. We stand, too, upon our superior equities against one who has, if possible, less of equity than law to support his claim to relief.

THE CASE IS SUBMITTED.

GEORGE G. WRIGHT,
Counsel for Resp't.

IN THE HONORABLE

The Supreme Court of the United States.

October Term, 1876.

JAMES CALLAHAN, JR.,
vs.
MICHAEL HURLEY.

No. 115.

Appeal from the Circuit Court of the United States for the District of Iowa.

Brief of Counsel of Appellee.

ABSTRACT OF THE CASE.

THE PLEADINGS.

1. Michael Hurley brought his bill of complaint on 2d January, 1872, in the court below against James Callahan, Jr., and Thomas Meredith, averring that by virtue of entries made under acts of Congress he became owner in fee-simple of certain described tracts of land in Cass county, Iowa, and particularly described by surveyed divisions of sections, in the bill.

See Record, pp. 1, 2, fols. 6 to 8.

Complainant further averred that James Callahan, one

of the defendants, was pretending to be owner of the lands by virtue of pretended conveyances thereof for delinquent taxes, executed and delivered by the treasurer of Cass county, to a certain Orlando Meads and a certain Dexter Reynolds, purporting to convey to them all of the said lands; and at other times the said James Callahan pretends that the lands belong to said Meads and said Reynolds, respectively; but complainant avers the truth to be that Callahan is the real owner, but for some motive, contrary to equity, he conceals the real character of his interest to the injury of complainant, who has been prevented from impleading the proper parties for the purpose of removing the cloud cast upon his title by the pretended tax deeds.

See Rec., p. 2, fols. 8 and 9.

That by the laws of Iowa the said tax deeds are presumptive evidence of the regularity of the proceedings on which they are founded, purport to divest complainant of all his title, and are spread upon the records of Cass county, which contain the evidence of complainant's title.

See Rec., p. 2, fols. 9 and 10.

That the several conveyances to defendant are void; the lands were not sold for taxes; no tax was levied for the year for which it is pretended they were sold upon any of said lands. The taxes, if there were any, never became delinquent; no one was authorized to receive payment of the taxes; there was no warrant for the sale of the land for taxes, and no such sale ever took place, but certificates were issued to Meads and Reynolds reciting, contrary to the truth, the sale of said lands according to the statutes of Iowa.

See Rec., p. 2, fols. 10 and 11.

That Callahan threatens to create other clouds upon complainant's title, by executing deeds of conveyance of said lands, in small parcels, and putting purchasers in possession, which will put complainant to great trouble and expense in prosecuting suits to recover.

See Rec., p. 3, fol. 11.

That Thomas Meredith, contrary to equity, claims some interest in the lands by virtue of the pretended tax deeds.

See Rec., p. 3, fol. 11.

He prayed that Callahan be required to answer certain interrogatories; that the certificates and treasurer's deeds issued to Meads and Reynolds be cancelled; that Callahan be decreed to have no title, and complainant quieted in his title, and for process of subpœna.

See Rec., p. 3, fol. 12 to 14.

2. James Callahan answered the bill on the 26th day of February, 1872.

He avers that he knows nothing of complainant's title, and leaves him to make proof; he denies that the complainant is owner in fee-simple of certain premises, described in detail, and being part of those described in the bill, which he avers were subject to taxation for the years 1859, 1860, 1861, and 1862; were duly listed and assessed for each of said years.

See Rec., pp. 5 and 6, fol. 22 to 24.

The answer then states in detail the taxes levied on each tract for each of said years.

See Rec., p. 6, fol. 24 to 27.

That on and before 4th of January, 1864, the said taxes were due, and on that day a portion of the tracts were sold at public sale by the treasurer of Cass county to Dexter Reynolds, and the remainder to O. Meads, each of them paying for the portions he bid for, and the treasurer issued to them certificates of sale.

Rec., pp. 6 and 7, fol. 28 and 29.

That on the 29th January, 1867, more than three years after the sale, the lands not having been redeemed, the treasurer made and delivered deeds of conveyance to Dexter Reynolds of the tracts purchased by him, and to O. Meads of the tracts purchased by him, which deeds were duly acknowledged, filed for record in the office of the recorder of the county, and thereby all the estate of the former owner, and all the right, title, and interest of the State of Iowa in and to said lands, became vested in Dexter Reynolds and O. Meads, respectively.

See Rec., p. 7, fol. 29 to 31.

That certain other tracts were subject to taxation for the year 1863, and on 2d January, 1865, the taxes being delinquent, the lands were, on the latter day, sold for taxes by the treasurer of the said Cass county, at auction, to Dexter Reynolds, and after three years, the lands not being redeemed, the treasurer of the county delivered a deed of conveyance to Dexter Reynolds, and the same was duly recorded in the county.

See Rec., pp. 7 and 8, fol. 31, 32, and 33.

That Reynolds paid the taxes on each tract for the years

1864, 1865, and 1866, after the same became delinquent for each of said years.

See Rec., p. 8, fol. 33.

That on the 1st November, 1869, the said lands were sold for the delinquent taxes for the years 1860, 1861, 1867, and 1869, which taxes were paid by James Callahan; and the title to all the lands, it is averred, is held and owned by said Reynolds and Meads.

That in February, 1868, Callahan agreed to purchase from Reynolds all of said pieces of land, and the same are to be conveyed to him when he performs the stipulations of the contract, the time for performance not having expired.

See Rec., p. 8, fol. 33.

That after said tax sales the lands were subject to taxes for the years 1863 to 1871, both inclusive; taxes were assessed on them for each of said years, and being delinquent for 1863, '64, and '65, Dexter Reynolds paid the taxes for each of said years, and taxes being delinquent thereon for 1866, the same were separately sold to Reynolds and Meads, each being the portions sold and conveyed to them on the 7th November, 1867, as above set forth; and they, Reynolds and Meads, paid the taxes thereon for the years 1867, '68, and '69.

That on 2d October, 1871, the taxes on said lands being delinquent for 1870, the same were sold for taxes to different persons.

Rec., p. 8, fol. 35.

That he has an equitable interest in the lands by virtue

of his contract with Dexter Reynolds; that the latter and O. Meads hold the legal title.

Rec., p. 8, fol. 36.

On the 31st December, 1872, complainant filed a motion for leave to amend his original bill, to set out additional grounds of relief which had come to his knowledge since the filing of the original bill; which motion was granted.

See Rec., p. 10, fols. 42 and 43.

On 6th January, 1873, the complainant filed an amended bill.

He avers that the pretended sales for taxes set up in Callahan's answer conveyed no title to said Reynolds, or Meads, or Callahan, because at the time of said assessments and levies the lands were not subject to taxation; and that Callahan, Meads, and Reynolds combined and confederated to prevent competition at the sales for taxes, agreeing that Reynolds and Meads should invest in tax sales in Cass county to the extent of twelve thousand dollars; that Meads should take the lands in the northeast part of the county, and Reynolds should take those in the southern part, each to the amount of six thousand dollars.

See Rec., p. 11, fols. 46 and 47.

That in pursuance of the unlawful combination charged, the said Reynolds and Meads, appeared by an agent at the court-house in Cass county, and directed the treasurer to issue certificates of sale to the extent of six thousand dollars to Meads for lands upon which taxes were delinquent in the northeastern part of the county, and similar certificates to Reynolds for lands on which there were delinquent taxes in the southern part of the county to the extent of

six thousand dollars; and under these directions, without having sold any of the lands to either Reynolds or Meads, the treasurer issued the certificates to them, on which they afterwards obtained deeds of conveyance, which are set up in Callahan's answer, and of all which unlawful doings Callahan had notice.

See Rec., p. 11, fols. 47 and 48.

He brings into court and deposits for the use of defendants all of the moneys alleged by them to have been paid. He further avers that the sales set up by the answer are of no avail, because he has redeemed the lands according to the laws of Iowa, from the said sales made subsequent to the sale of January, 1864.

See Rec., pp. 11 and 12, fols. 48 and 49.

On the 3d February, 1873, the defendant filed his answer to the amended bill.

See Rec., pp. 12 to 14.

The answer denies that the sales of the lands described in the bill are void to confer title on Meads, Reynolds, or Callahan; denies that the lands, at the time of levy, were not subject to taxation; avers that the sales for taxes were valid and conferred a good title on said Meads and Reynolds; avers that the lands were subject to be and were legally assessed.

See Rec., p. 12, fol. 52.

Denies all combinations to prevent competition at the tax sales; denies all the allegations as to agreement to invest to the extent of twelve thousand dollars at the tax

sales in Cass county, and the apportionment to Reynolds and Meads, and the direction to the treasurer of Cass county to issue certificates of sales for the land to Reynolds and Meads, as if the lands had been actually sold, and denies the obtaining of deeds under such an arrangement.

See Rec., p. 13, fols. 53 to 55.

Denies that he had any notice of any unlawful doings of Meads or Reynolds, or of the treasurer of Cass county.

See Rec., p. 13, fol. 55.

That since filing his answer to the original bill the contract between himself and Reynolds for the conveyance of the lands described in the bill has been fully performed; that he is now owner of said lands in fee simple, and that he purchased for a valuable consideration, without notice of any fraud in any particular, and denies that complainant, at the time of the commencement of the action, had paid off the taxes due on the property.

Rec., p. 13, fols. 56 and 57.

On the 1st March, 1873, the complainant filed a general replication.

See Rec., p. 14, fols. 59 and 60.

The ultimate facts are, as developed by an abstract of the evidence:

1. The lands in controversy were vested in the complainant by patents from the United States.

See Rec., p. 18, fol. 75.
See Rec., p. 191, fol. 738.

2. The alleged proceedings pretended to be a tax sale, by which it is averred by defendant that complainant's title to the lands was divested, was held at the office of the treasurer of the county of Cass, in the State of Iowa, on the 4th day of January, 1864.

See Rec., p. 21, fol. 83. Davenport's dep.

3. The advertisement under which the alleged sale was made was for January 4, 1863, instead of, as it should have been, January 4, 1864, and no other advertisement was made.

See Rec., p. 174, fol. 680. Dickerson's deposition.
See Rec., p. 66, fol. 261. Exhibit A, referred to in Gardner's deposition.
See Rec., p. 76, fol. 295. Exhibit A, referred to in Gardner's deposition.

4. A portion of the lands, under the alleged sale, were adjudicated to Dexter Reynolds, and a portion to Orlando Meads; but the latter was a merely fictitious purchaser, the sole party in interest was Reynolds, to whom Meads lent his name, without having any interest.

See Rec., p. 125, fols. 479, 480. Reynolds' deposition.
See Rec., p. 146, fol. 559. Callahan's deposition.

5. Dexter Reynolds employed John Warford to purchase the lands at the tax sales for him.

See Rec., p. 109, fols. 417, 418. Warford's deposition.
See Rec., p. 38, fols. 151, 152. Dickerson's deposition.

6. The lands were not sold by being put up, as is done at an auction, and cried out and knocked down to the highest bidder. They were not offered for sale.

See Rec., p. 23, fols. 91, 92. Davenport's deposition.
" Rec., p. 24, " 98, foot. " "
" Rec., p. 25, " 101. " "
" Rec., p. 28, " 114. " "
" Rec., p. 99, " 377. " "

The whole of the second deposition of Davenport (Rec., pp. 97 to 107) shows the fraudulent nature of the pretended tax sale of 4th January, 1864.

7. There was an arrangement between John Warford, the agent of Reynolds, on one side, and Dickerson, the treasurer of Cass county, on the other, that Reynolds and Meads were to become the purchasers of all the lands on which there were not over two or three years' delinquent taxes, except some few pieces that might be wanted by residents of Cass county, or by some persons about the place.

See Rec., p. 23, fol. 93. Davenport's deposition.
" " " 24, " 96. " "
" " " 26, " 103. " "
" " " 27, " 107. " "
" " " 32, " 127. " "
" " " 68 to 70, fols. 266 to 272, being Exhibit A, annexed to the deposition of Isaac Dickerson.

Dickerson subsequently made an attempt to break the force of the deposition in Exhibit A, just referred to, by declaring that when he gave it he was under the influence of liquor.

See Rec., p. 169, fols. 658, 659.
" " pp. 173 and 174, fols. 676 to 680. Dickerson's deposition.

8. John Warford, the agent of Dexter Reynolds, making the alleged purchase at the tax sales of the lands in question, was not present when the pretended sales were made.

See Rec., p. 53, fol. 209, Waddel's dep.

9. The tax sales of the 4th January, 1864, when it is averred the property in question was sold, cover 135 pages of the county treasurer's record, of which the pages are 17 inches long and 20 inches wide; which to copy would take 30 days.

See Rec., pp. 57, 58, fol. 236, Warwick's dep.

The number of descriptions of pieces of land purporting to have been sold to Reynolds on the 4th January, 1864, was 512; and the number of descriptions purporting to have been sold to Meade was 522.

See Rec., p. 58, fol. 228, Warwick's dep.

And the official register shows no adjournment of the tax sales from the said 4th of January, 1864, to any other day in said month.

See Rec., p. 59, fol. 233. Warwick's dep.

It would have been impossible to make the sales in one day.

See Rec., p. 161, fol. 623. Dickerson's dep.

10. The complainant, Hurley, redeemed these lands from the subsequent tax sale of 1867.

See Rec., p. 64, fol. 254. Warwick's dep.

11. It appears that at the alleged tax sale of 4th January, 1864, Meads seems to have bought 19,887 and Reynolds 19,527 acres.

See Rec., p. 65, fol. 257. Gardner's dep.

12. Callahan, the defendant, was fully aware of all the circumstances of the alleged tax sale of 4th January, 1864.

See Rec., p. 72, fol. 279. Churchill's dep.

Callahan says he first had notice of the alleged fraud in the tax sale of January 4, 1864, some time in 1870 or 1871.

See Rec., p. 148, fol. 568. Callahan's dep.

Callahan took his deed for the land in controversy from Reynolds and Meads, on the 16th December, 1872.

See Rec., p. 146, fol. 560. Callahan's dep.

This suit was commenced on 2d January, 1872.

See Rec., p. 1, fol. 5.

13. It seems certain, from the proof, that John Warford, agent for Meads and Reynolds, and who, it is pretended, was at the alleged tax sale of 4th January, 1864, when it is pretended he, Warford, bought the lands in question, was not on that day present at the pretended sale at all.

See Rec., p. 79, fols. 304, 305, and 306.

See Rec., pp. 79 and 80, fols. 306 and 307; all in the deposition of Cole Nool.

All the testimony of Nool, from Rec., pp. 79 to 86, goes to show that on the 4th January, 1864, and for some days subsequent, Warford was in Dallas county and not in Cass county, where the pretended tax sale purports to have been made.

See the deposition of Smalley, Rec., pp. 86, 87, which is to the same effect as Nool's.
See Rec., p. 21, fol. 85. Davenport's dep.
See Rec., p. 97, fol. 372. Davenport's dep.

John Warford himself is careful not to state that he was in Cass county at the sale on 4th January, 1864.

See Rec., p. 111, Int. 20, fol. 423. Warford's dep.
See Rec., p. 112, fol. 428. Warford's dep.
See Rec., p. 94, fol. 357. Cornish's dep.

This testimony of Cornish fixes 17th January, 1864, as the date when Warford went to Cass county and pretended to make the purchases of these lands at a tax sale of 4th of same month, and Cornish's testimony is corroborated by that of Warford himself.

See Rec., p. 115, Ints. 44 and 45, fols. 440 and 441. Warford's dep.

But Warford equivocates through the whole of his deposition.

Dickerson, the treasurer of Cass county, who should have made the pretended sale of 4th January, 1864, also carefully avoids swearing that Warford was there on that day.

See Rec., p. 159, fol. 614. Dickerson's dep.

THE QUESTIONS INVOLVED.

The case presented on the pleadings and proofs in this record raise the following questions:

First. Whether a sale for taxes advertised for 4th January, 1863, can be lawfully made on 4th January, 1864? And whether such a discrepancy does not render the sale null and void?

Second. Whether the conduct of Dickerson, the treasurer of Cass county, of Davenport, his temporary clerk, and of Warford, the agent of Reynolds, as displayed in the record, does not show a combination and conspiracy to effect the transfer of the lands of complainant to Reynolds by a secret and private arrangement, without public competition?

Third. Whether the combination and conspiracy of Dickerson, Davenport, and Warford does not render the transfer of the property in question to Reynolds and Meads null and void?

Fourth. Whether the nullities resulting from the erroneous advertisement of the tax sale, and the fraud which tainted the transfer of the property, do not affect the defendant; even admitting him, for the sake of argument, to be an innocent purchaser without notice?

Fifth. Whether the testimony in the record of Churchill, (p. 72,) and of Callahan, the defendant himself, (pp. 146 and 148,) is not sufficient to charge Callahan with notice of the irregularities and frauds connected with the alleged sale of the lands of 4th December, 1864?

POINTS.

FIRST. It is a fundamental principle that no man shall be divested of his property without due process of law; consequently the legal forms required for this divestiture must be strictly observed; an announcement of a tax sale for a certain date in a certain year is ineffectual to justify a sale in another year, and such a departure from the advertisement will invalidate the sale.

In the case of Fitch *vs.* Pinkard, (15 Ill., p. 69,) it was held that where newspapers dated 1837 were produced, containing the advertisements dated 1836, held, parol proof not admissible to show that this was a mistake for 1837.

This is esteemed a leading case on the law of tax sales.

And in the case of Huey *vs.* Horrel, (2 Ohio, 232,) it was held that where "the collector was required by ordinance "to give notice that the taxes were due, and if not paid by "the first of October, he would proceed to advertise and "sell. He was also required, if not paid by that time, to "advertise and sell. The plaintiff's offered copies of the "Alton *Spectator* to prove the giving of the first notices, "which were published on the 27th July, and 10th, 17th, "24th, and 31st August, 1837. This notice bore date "'Alton, July 6, 1836.' In connection with, and explain-"atory of, this notice, they offered to prove the like notices "of taxes being due published in the Alton *Spectator* for "1836, and that the notice was intended for 1837, and the "date was a mistake; but the court excluded the whole of "this testimony. Otherwise purchaser might obtain acres "for cents, without competition."

SECOND. The lands were to be sold for delinquent taxes, and offered at public sale. (See Rec., p. 66, foot.) The meaning of this is perfectly clear; each lot or parcel of

IN THE

SUPREME COURT

OF THE

UNITED STATES.

JAMES CALLANAN, JR.,
Respondent and Appellant,

vs.

MICHAEL HURLEY,
Complainant and Appellee.

} *Appeal from U. S. Cir. Court, District of Iowa.*

Counsel for respondent and appellant in argument filed, has fairly stated the case upon the record and cited many cases from Iowa Supreme Court as bearing upon this controversy. So few of them have any direct application to the issue, in this case, that we forbear to notice but a few of them.

I.

At the threshhold of the argument of appellant, and in support of his first point we find cited, the case of *Phelps vs. Meade et al*, at 41 Iowa, 470, a case with which we doubt not appellant is more familiar than with any of the many other authorities cited in argument. In that case it is said in argument, "that the court, after a most elaborate examination

of all the facts, and the law applicable, dismissed complainants bill, (*based* upon the same grounds as in this case,) and upheld the tax title. It is also claimed in argument that that case not only reviews the several decisions of the State court, but that it passed upon the *very facts* the *very testimony here.* And hope is entertained in argument that this court will gladly accept that adjudication as *settling this* controversy. *Because* it would be anomolus to have one rule of decision and property in the state, and another in the Federal Tribunals. The conclusion reached is, that this court is *simply called upon to follow* that case.

Did we view that case in the same light as counsel for respondent, we should deem it a waste of time to argue. If the position assumed by the learned counsel for appellant be true, then indeed would there be no hope of escape from the effect of possible local influences over or prejudice in local tribunals pending the determination of cases in this court, wrought out and made potent in their published opinions. But we are inclined to take a broader view of the situation.

We shall not consent that this court shall by our silence be circumscribed in its power of meeting out justice and equity to its suitors. If we understand the case of *Phelps vs. Meade* in all its bearings and surroundings, we shall ever continue to hope that it shall not be held as a controlling authority in this case.

The rule of this court under which it follows the decisions of the state court in the construction of state statutes in no manner trenches upon its right to determine all questions of fact as well as all questions of law aside from the mere construction of statute. In this case questions of fact arise which must be determined alone by this court, as well as principles of law lying outside of the construction of statutes, and in these fields of judicial investigation state decisions should have neither moral nor legal obligation upon this court.

In order that this court may know what facts were before

the State Supreme Court in *Phelps vs. Meade*, we have printed and had certified by the clerk of said court a true copy of the record upon which that decision was made, attested with his seal, and file the same with this argument And we desire to call the attention of the court to a few facts that appear of record in the case at bar, and also in the record in that case. In doing so we trust we may be excused for attempting to place this court in possession of sufficient facts to enable it to determine whether or not the decision in that case can be successfully urged by appellant in this case as conclusive upon this court in his favor.

We present a few facts in chronological order as follows:

The appeal in this case was taken at decree May 28, 1874. (See record, pages 193-4.)

Deed by James Callanan, Jr., to his co-defendant McDermott in *Phelps vs. O. Meade*, September 2, 1874. (See record in *Phelps vs. O. Meade*, page 17.)

Appeal bond filed in this cause September 8, 1874. (See record, pages 194-5.)

January 9, 1875, petition filed in Cass county district court. (See record *Phelps vs. O. Meade*, page 1.)

Answer in *Phelps vs. O. Meade*, filed same day. (See record *Phelps vs. O. Meade*, page 3.)

Stipulation in *Phelps vs. O. Meade*. (See page 5, record *Phelps vs. O. Meade*.)

Then follows the evidence and all the evidence given upon the hearing of that case, as appears from the record, page 17, where it is recited and stated as follows: "The above and foregoing being all the evidence and proofs offered by either party the court thereupon entered a

DECREE,

dismissing plaintiff's bill of complaint and cause of action, and entered judgment for costs against plaintiff.

We have thus referred to the record in the case of *Phelps vs. O. Meade* cited by appellant to show—

1. That Callanan, appellant herein, was a party to that case.

2. That it was instituted after appeal taken in this cause.

3. That the evidence before the Supreme Court in that case was not the same as in this case.

4. That the plaintiff in that case was one of the attorneys of appellant, Callanan, in this case. (See record pages 15, 71.)

5. That in the case of *Phelps vs. O. Meade*, 41 Iowa, 471–2, the same attorneys appear for both plaintiff and defendants that appear of record in this case for defendant until the arguments for appellant in this court.

Upon these facts, disclosed in these records, we urge upon your honors' attention the question how far this case of *Phelps vs. Meade*, 41 Iowa, shall be considered by this court as authority in this case. If it is the legitimate outgrowth of circumstances arising in the ordinary course of affairs, it should perhaps meet with no criticism. If not it should be carefully examined, and its weight as an authority restricted to the narrowest limit possible.

In this view of the subject we call attention to the facts apparent of record in that case that appellant's counsel in this case represented both sides; that the plaintiff was one of appellant's attorneys in this case; that appellant was a party, and that it was instituted pending this appeal.

We further call attention to the fact, that this case of *Phelps vs. O. Meade* was heard in the State Supreme Court upon a printed record of but seventeen pages, including pleadings, and but twelve pages of evidence. Many of the depositions of witnessess in this case are wholly left out of that, and what purports to be the evidence of witnesses is shorn of its sharp edges (wherein is found the truth) and the same rendered harmless to defendants in that case, presenting to the court

but part of the evidence *in this case under pretext that it was the whole of it.*

By section 763, Revision of 1860, (under which these sales were made) it is provided: "On the first Monday in October, in the year 1860, *and in each thereafter*, the county treasurer is required to offer at *public sale*, at the court-house, * * * * * * all lands, town lots, or other real property on which taxes of any description for the preceding year or years shall have been delinquent and remain due and unpaid. And *such sale* shall be made for and in payment of," etc.

Section 764 provides: "The county treasurer is required to give notice of the sale by publishing an advertisement thereof in some newspaper printed in his county, * * * and by posting up a copy of said notice on the door of the court-house in said county, at least four weeks before the day of sale; which publication is required to be made once in a week for three successive weeks, *the last of which publications is required to be at least three weeks prior to the day of sale.* It is required that such advertisement shall state the *time and place* of sale, *and contain a description* of the several parcels of real property to be sold, as the same are recorded, on the tax list," etc.

Section 765 provides: "The county treasurer shall attend at the court-house * * * on the day of sale, and then and there, at the hour of ten o'clock in the forenoon, proceed to *offer for sale separately* each tract or parcel of real property advertised for sale," etc.

Section 766 provides: "The person who offers to pay the amount of taxes due on *any parcel of land*, for the smallest portion of the same, *is to be considered the purchaser.*" &c., &c.

Section 767 provides: "The Treasurer shall continue the sale from day to day, as long as there are *bidders*, or until the taxes are all paid.

Section 783 provides: Deeds executed by the treasurer *shall be* substantially in the following form:

(Here follows a form of deed.)

Now under the foregoing provisions of the statutes and the evidence in this case, was there any sale *in fact* of these lands to Reynolds and O. Meade, such as authorized by the statute—what kind of a sale was authorized? A private sale? No. The only authority given to the treasurer was to make *public* sale. The language of the statute is "*to offer at public sale.*" And again, "*such sale shall be made, etc.*" (See, Sec. 763, *supra.*

In *Phelps vs. Meade*, 41 Iowa, after referring to certain of the depositions, the court proceeds: "A careful consideration of all the evidence satisfies us that there was a sale in fact of the land by the treasurer." But is it meant by this case to hold that a treasurer under these statutes had the *power* given him to sell at *private sale the property taxed?* The power given is only to sell at *public* sale. That means something. It is a question of power—not one of manner and form. An irregularity or informality is one thing and the absence of power is quite another thing. The evidence in this case, shows that Warford, the purchaser's agent and the treasurer sat down and bargained for these lands without any *public sale* thereof. And that the sale, if sale at all, was but a mere private one, having none of the elements of a public sale whatever. Might a sheriff after offering lands under execution and finding no bidders return to his office and sell at private sale?

If county treasurers may thus by caprice or otherwise, divest the owner of his title by their unauthorized act in making private sales and deeds for tax lands and receive the sanction of the courts, then indeed (we apprehend) is titles held by a very precarious and slender thread, and new ones arise from chance rather than legal right. We think we hazard

nothing in claiming that no line of decisions in Iowa has met with such universal disfavor by the bar as that of tax titles, and yet no court has been so radical as to ever hold that the treasurer had vested in him the right of making private sales of lands for taxes.

And to talk of a sale in fact, must when divested of its cover, mean a public sale in fact. Let us repeat it—such a sale as he is authorized to make, to-wit: *a public sale in fact.* This is the ultimatum of his power—irregularity or informality in making *such a sale* may not affect the title, but no sale short of a *public sale* can divest the title. And while Cole, judge, in *Phelps vs. O. Meade*, upon a partial record of the evidence in that case, finds a sale in fact without discriminating between *a public sale in fact* and a private sale; we believe this court upon findings of fact, are in no manner bound by the finding of any other court upon like questions of fact, and especially where the evidence is not all before such state tribunal.

We here affirm what we have so often repeated, that there was no such sale in this case, as the treasurer had any power to make and the same was absolutely void.

This view was sustained by his Honor, Judge Dillon, who had for a series of years occupied a seat upon the state bench, and was familiar both with the statutes and the decisions of the Iowa courts thereunder.

Without reproducing in this argument what appears in the printed record, we invite the attention of the court to that part of the testimony of John Warford, (the agent who made these purchases) commencing with cross Int. 43, at page 115, to cross Int. 110, page 120.

From this testimony it will be seen that Warford and the treasurer sat down by themselves at a table and selected from the lands upon the tax lists only such pieces as had not delinquent taxes for more than three years, keeping no record, but checking upon the printed lists, as we suppose, simply to see

if enough land having the desired delinquent taxes could be found. That no one was present except perhaps, the clerk, and that no bid was offered by any person, and no lands sold or offered for sale during the time Warford was selecting these lands. That this agent, Warford, kept no memoranda except the check mark he made on published list, and this he left with the treasurer. He testifies, cross Int. 97, page 118: "*There was no bidding against me at any time, nor lands sold to any other person during the time that I was there, that I remember of.*" Cross Int. 102, says: "*In calling off the land I think the treasurer omitted such as were delinquent for over three years, and called only such as were delinquent three years or less.*" Cross Int. 103: "*I told the treasurer that I only wanted such lands.*" Cross Int. 106: "*The treasurer followed my direction as to whom certificates should be made—what part to Reynolds and what to Meade.*" And at page 119, cross Int., 108, 109, "I mean to say that the numbers of such tracts were read off by the treasurer, and I said I would take the piece called. *I could not say that all the lands embraced in the certificates to Reynolds and Meade were so called, as the memoranda I kept at the time was left with the treasurer. This calling off was in a conversational manner.*" At page 119, cross Int. 100, he says: "*I never knew the number of acres I purchased at that time.*" Page 120, cross Int. 117, "This was in fore part of Jan., 1864. The day I ca n't give. There is no pretense that Warford was engaged, beyond the business hours of two days in making these selections."

Wm. Gardner, auditor, testifies, Trans., page 65, that there was 19,887 acres marked sold to Meade, and 19,527 acres to Reynolds, and exhibits the treasurer's monthly report, showing all sales, January 4, 1864; (see page 67.) Here is

THIRTY-NINE THOUSAND FOUR HUNDRED AND FOURTEEN ACRES

of land bargained away in less than twelve hours time

with no one present but the treasurer, his clerk, and the purchaser. Just think of it; and this too, without a single opportunity for opposing bids. We also call attention to the testimony E. W. Davenport, who was the treasurer's clerk. At page 25, says he don't remember that the treasurer, during the month of January, 1864, offered any lands at public outcry, or in any public manner for sale for taxes. Says if it had been done he thinks he would have remembered it.

At page 31 he testifies: I cannot now remember of a single piece being offered. I think I would have known it at the time if the land sold to Reynolds and Meade had been previously offered. (Page 99,) he says he made, the record, and marked against the lands on the tax lists the word sold, giving name of purchaser. (Page 100) Meade was to have so many dollars worth in one part of the county, and Reynolds was to have so many dollars worth in another part of the county.

He knew the particular pieces or tracts to certify to each, and was guided as the treasurer's clerk in this way, *viz:* each party (Reynolds and Meade) was to commence at certain points and take as they come, until a certain amount in dollars and cents was reached for each.

It was understood that if any tract or piece was wanted by any one in the town or county they were to have it; *if not it was to be certified to Meade or Reynolds.* That Reynolds and Meade were not to have certified to them any lands that had taxes delinquent thereon for more than two or three years, and this was his guide in making out his certificates. That in making out these certificates to Reynolds and Meade the printed lists and tax books only served as a guide to show what was for sale and what tax was due on each piece. He made out all these certificates. That none of them were made while Warford was there (page 101). That he got these instructions from Dickerson before he went to work making out the certificates. That he acted under this understanding

and while making out these certificates for Reynolds and Meade he made selections for others and gave them certificates for such selections. That it was so understood by all parties. It was *an agreement* between Warford and all parties, including Wm. Dickerson. Think that Dickerson acted as agent for other parties. This Dickerson, treasurer, admits. (See page 45.)

Treasurer Dickerson (at page 43 of record) says: After 4th of January, 1864, the sale *was conducted by his clerk entirely*, and that the clerk was engaged in this matter for about six weeks. At page 45, that Beebe sent him from $500 to $1000 to invest in tax lands, which he did by having lands certified to Beebe. At page 47 he says, *Davenport was acting as his clerk and that he had no deputy.* Page 158, the lands marked sold on January 4, 1864, were not all sold on that day; some were sold on that day, and the rest from day to day thereafter for two or three weeks. I dated all the sales as of that date from the fact that the sale commenced on January 4. Page 159, can't state what day Warford was at sale. It was probably several days after the commencement of the sale.

Now, from the foregoing testimony, as well as much other in the record confirming it and nothing contra, we not only insist, as heretofore in this argument, that there was no public sale of these lands by the treasurer, and hence no sale in fact. But we further insist that there could not in the very nature of things be any sale of any kind without selecting, marking, and setting apart of the particular lands certified to Reynolds and Meade. The mind of the seller and the purchaser must unite in proposing and accepting. This was not done, because Warford at most only claims that part of the Reynolds' and Meade's lands were checked on published list, and this he left with the treasurer; that he kept no memoranda; says he never knew what lands he selected, or how much, or whether he got proper certificates. Dickerson does not claim more. Davenport says he had nothing to guide him in making out

these certificates except the agreement that Reynolds was to have certified to him land in one part of the county and Meade in the other part until a certain amount in dollars and cents was reached, and neither were to have lands on which there was more than two or three years delinquent tax. So that the treasurer in law and fact became both purchaser and seller.

This is not all, for it was the agreement between the treasurer and Warford that if any parties, residing in Cass county, wanted any of these lands, that would under this agreement be certified to Reynolds and Meade, they should have such pieces, and such selections were made during the making up of the certificates to Reynolds and Meade, and certificates issued therefor to the parties making them. *Now, it must be remembered that it was not the agreement that Reynolds and Meade should have all lands on which delinquent taxes existed for two and three years less such as might be wanted by citizens of Cass county.* But these selections where to end when their investments amounted to a certain sum of money. How then could it be known what would be selected by citizens of Cass county, and what would be left for Reynolds and Meade without the subsequent action of both the citizens of Cass county and the treasurer? The evidence not only shows this agreement undisputed, and that lands were afterwards selected and certified under it, but it shows that Warford never knew what lands he selected, or for what he was entitled to receive certificates. In short, these selections and certificates were the acts of the treasurer, or rather his clerk, and were not the results of any concluded sale by the treasurer to Warford, either public or private.

This is apparent from the further fact, that all the entries of these sales are made as of the 4th day of January, 1864, when the testimony of Cole Noel, page 79; O. D. Smally, page 86; J. N. Cornish, page 93; and stipulation, pages 17 and 18,

show most conclusively that Warford was not at Cass county on January 4, 1864, or at any time before the 18th, while the record of the treasurer, as shown by Abs., page 67, Ex. A, places the first sales as being made to D. Reynolds and O. Meade; and also show the lands marked to Reynolds as being all in township 74, 75 and 76, or in one side of the county, while those marked to O. Meade are all in township 76 and 77, or in another part of the county. Up to the taking of the evidence of Noel *et al.*, the treasurer had no remembrance beyond what the record disclosed.

We again invite the attention of the court to the testimony of Wm. Waddell, the clerk of the district court, at page 55, where he testifies: "I think Dickerson told me prior to the sale of January 4, 1864, that he received a letter from the agent of Eastern parties, Meade & Reynolds, proposing to invest some money in the purchase of lands for taxes in this county, stating the amount of money they wished to invest, and the kind of lands they wished to purchase. If I recollect right, he wanted the lands purchased by them, one taking in one part of the county and the other in the other part, I think. * * The lands were so struck off."

The treasurer, at page 42, admits that he received letters from Warford before the sale, in regard to these lands, but the mice eat them up, and he has forgotten the contents.

In the Campbell and Playter deposition, at page 175, he testifies to the agreement he had with Warford, which is in full harmony with the testimony of Davenport and Waddell, *supra*.

This question was asked him in that deposition, (record, p. 175:)

State how that sale was conducted, etc.

He answers: The tax sale was held on the 4th of January, 1864. * * My instructions were, as near as I can remember, to commence at the northeast corner of the county, and enter up the lands in the north part of the county to O. Meade, ***by taking the land in rotation*** that was delinquent, and

the south part of the county to Dexter Reynolds. E. M. Davenport made all the entries and made out all the certificates, I being engaged in other business, merely signed the certificates and cancelled the stamps.

This question also was asked him, page 175 :

"In making out these certificates to Meade and Reynolds Mr. Davenport, then, just took the tax book and made them the certificates out from them according to Warford's instructions ?"

Ans. " Yes."

This was in a deposition given before this controversy arose, and that this was true all the proofs conduce to show and place beyond any reasonable doubt. Dickerson does not deny these facts.

Revision, section 773, provides : "If any county treasurer shall be, hereafter, either *directly or indirectly concerned* in the purchase of any real property sold for the payment of taxes, * * * all such sales shall be void."

The court will observe the language of this statute. The word used is not "interested in" but "concerned in" the purchase, &c. The object being to prevent any interference with sales or other disposition of tax lands by the treasurer other than in an open manner and by public sale as provided and contemplated by the statute, and it is wisely provided that all such sales shall be absolutely void.

In this case the treasurer was directly concerned in the purchase of these lands of complainant by making and entering into agreement with the purchaser and selecting and certifying the same under such agreement when no public or other valid sale was made of the said lands to Reynolds and Meade.

If, however, the words of this statute shall be construed as in the sense of "*interest*," then we say the acts of treasurer in

entering into this agreement with Warford, and in selecting and certifying the lands to Reynolds and Meade thereunder, as well as the acts of the agent, Warford, constituted a fraud upon complainant which rendered the sale void.

By Revision, section 784, among other things, it is provided, "that in all cases where the owner of lands sold for taxes shall resist the validity of such tax title, such owner may show and prove fraud committed by the officer selling the same, or in the purchaser to defeat the same, and if fraud is so established such sale and title shall be void."

McCready vs. Sexton, 29 Iowa, 356.

Again, it is argued that while complainant is not estopped to show that there was no sale, yet the defendant is estopped from proving a sale on another day to support his tax deeds. And if complainant has shown (and which he has conclusively by the evidence) that these lands were not sold on January 4, 1864, and that no sale in fact then took place to Reynolds or Meade, defendant cannot support his deeds by proving a sale at another time or on another day than that recited in his deeds.

But it seems to us that when defendant offers in evidence the records of tax sale in conjunction with his tax deeds, and both recite and show a sale of these lands on the 4th of January, 1864, (and he pleads accordingly) that he is estopped to prove a sale on another day to support his title under the deeds, if complainant has shown that no sale was made in fact of these lands at the time alleged by defendant in the deed or in the record. This is not a case where complainant admits a sale on another day, but seeks to avoid the deeds because of misrecitals in it, but it is a case where the complainant contends that there was no sale whatever, and he conclusively establishes by the evidence the fact that these purchasers were not either by themselves or agent present, to purchase until about the 17th of January, 1864, and says

they did not purchase even then. And now to permit defendant to abandon his record and prove a sale at another day to support his title, seems to be contrary to every principle of right. He presents no issue of this kind in his answer. He alleges no mistake in the deed or record.

Leavitt vs. Watson, 37 Iowa, 93, cited by appellant and relied upon in *Phelps vs. Meade*, is not in conflict with the foregoing views, but when carefully examined is fully in accord with them. In that case the treasurer had the undoubted right to receive a bid upon paper as if personally spoken and to strike the land off upon that bid, during the public sale of lands for taxes, if there was no other bid.

But that case falls far short of sustaining this sale when the treasurer and purchaser, without a public offering of the lands, set down and selected them and entered them up by the thousands of acres as sold, and where there are no bidders and no public sale or offering of them as required by law.

The learned counsel for appellant says: "And fortunately this question comes for final settlement at time when there are no conflicting decisions in the state tribunals, when there can be no pretense that any property or other rights have been settled under any other line of decisions, etc."

Doubtless the learned counsel had not seen the opinion of the Supreme Court of Iowa, in *Butler vs. Delano, et al.*, not yet published. And in as much as it is yet in manuscript, we print the opinion entire, which is as follows:

DAY, J. The evidence shows that at the close of the annual sale in October, 1864, the treasurer announced that the sale was adjourned from day to day, and he posted up notices of that fact. Subsequently he offered the delinquent lands for sale as often as, and whenever any one came to buy, and, in this manner, he made sales, February 23, 1865, February 28, 1865, May 2, 1865, May 29, 1865, and June 12, 1865, on which day the lands in controversy were sold. The delinquent lands were not offered for sale at any other time. The only notice

that was given of this sale was the notice that was posted on the door, that the tax sale was adjourned from day to day. But one notice of the adjourned tax sale was posted, and that was posted at or soon after the annual sale of October, 1864. J. U. Perry, who was employed in the treasurer's office, acted as agent for the defendants and various other parties, in bidding in lands at the sale in question, June 12, 1865. He handed the treasurer a list of all the lands he proposed to take, with the names of the different parties he intended to buy them for written opposite, and then he verbally offered to take each respective tract for the party whose name was written opposite for all the taxes, interest and penalties due thereon.

The treasurer offered the lands for sale, by holding up the list, but without reading over the entire list, or announcing all the descriptions publicly, and saying he offered each of the tracts for sale, and, no party offering to take a less amount of each tract, the whole of each tract was struck off to each party whose name was set opposite to the tract on the list. Afterward Perry, by request of the treasurer, made the entry of sale upon the tax sale register. This manner of conducting a tax sale cannot meet with too severe condemnation. It lacks every essential element of a legal sale. It was made both at a time and in a manner wholly unauthorized.

Section 763, of the Revision, requires the county treasurer to offer lands on which taxes are delinquent at public sale. Section 765 requires the treasurer to offer for sale, separately, each tract or parcel of real property advertised for sale.

Section 767 requires the treasurer to continue the sale from day to day as long as there are bidders, or until the taxes are all paid.

Section 773, is as follows: "When all the parcels of real property advertised for sale shall have been offered for sale as provided for in this act, and a portion thereof shall remain unsold for want of bidders, it shall be the duty of the treasurer to adjourn the sale to some day not exceeding two

months from the time of adjournment; due notice of which day shall be given at the time of the adjournment, and also by keeping a notice thereof posted in a conspicuous place in the treasurer's office. On the day fixed for the reopening of the sale, the same proceedings shall be had as provided for by this act in relation to the sales commencing on the first Monday of October. And further adjournments shall be made, from time to time, not to exceed two months, as provided in this section, and the sales shall thus be continued until the next regular annual sale, or until all the taxes have been paid"

The course pursued shows an utter disregard of these provisions.

At the close of the annual sale in October, 1864, the treasurer announced that the sale was adjourned from day to day, and he posted up a notice of that fact. Instead of resuming the sale on the following day, and continuing it from day to day, as the terms of the adjournment would impart, no further offer of the lands was made until parties came in to buy, which occurred on the 23rd day of February, 1865. No other or further adjournment was made, but sales were made whenever parties came into the treasurer's office and wanted to buy. Thus the sale was continued at irregular intervals from October, 1864, until June 12, 1865. During all this time no adjournment to a day named, as provided in section 773, was made. But, without adjournment or notice, the sale was kept open for eight months, and parties were allowed to come into the treasurer's office and have a sale whenever they wished to buy. A sale must be made at the time fixed by law, or at a time to which it is regularly adjourned. There is no authority for posting a notice that the sale is adjourned from day to day, and then marking lands sold whenever parties express a desire to buy, throughout the year. The sale lacked every requisite of a public sale. At 9 o'clock in the morning, no proclamation being made that there would be a sale, and no

notice being given, except a notice posted eight months before, that the sale was adjourned from day to day, a clerk in the treasurer's office handed the treasurer a list of lands, with the names of persons set opposite them for whom he wished to buy, and then verbally offered, on behalf of each person whose name was set opposite a tract, to take it for the taxes and penalties. The treasurer did not publicly read over the list nor announce all the descriptions. He did not, therefore, publicly announce what land he was selling. Of course there could have been no public announcement of the amount of taxes due on each parcel, as that would have involved the necessity of publicly reading the descriptions. Hence no opportunity for competition was offered, if any one was present to compete. But the strong probability, from the time of the sale, is that the treasurer and his clerk were the only persons present.

We cannot sanction such a procedure. The case coming nearest this in its facts is *Leavitt vs. Watson*, 37 Iowa, 93. But in that case, for aught that was shown, the sale was held at a time authorized by law. The treasurer gave public notice at the court house door that there would be a sale of lands for taxes. It does not appear but that each piece of land was publicly offered for sale, and the amount of taxes due thereon stated. The only irregularity shown was that the persons wishing to bid handed in a list of the lands on which they were willing to pay the taxes due, and, if there was no competition, such bid was received and the land treated as sold, without publicly crying the bid, or publicly striking off the lands. That cases go to the very verge in sustaining a tax title, but not, perhaps, beyond what the law, creating presumptions in favor of the validity of tax sales, requires.

To sustain this sale we must go much beyond that care, and hold that a legal tax title may be acquired at a sale in all essential respects, private in its character, or that the tax deed is conclusive proof, that a private sale is a public sale. In some

cases it is said that the deed is conclusive evidence of the manner of sale. Whilst this may be true in all the cases to which the language has been applied; yet it is true, in a qualified and not in a general sense. It is always competent to show fraud committed by the officer selling, or the purchaser. Rev. Sec. 784, *Kenven vs. Allen*, 31 Iowa, 578; *Corbin vs. Beebe*, 38 Iowa, 336; *Everett vs. Beebe*, 37 Iowa, 452; *McCready vs. Sexton*, 29 Iowa, 356.

The statute required that lands upon which taxes are delinquent, shall be sold at public sale on a day prescribed, or on some other day, to which the sale is regularly adjourned. The purpose of a public sale is to secure competition, and the payment of the taxes for as small a portion of the delinquent lands as possible.

Any arrangement between the treasurer and the purchaser, which substitutes a private for the public sale, which the law contemplates, operates as a fraud upon the owner of the land, and renders the sale invalid. We hold that the sale in question was private, and hence fraudulent, and that the deed is not conclusive evidence that it was public and legal.

The cause will be remanded to the court below for an accounting of the amount of taxes and interest paid by defendant upon the lands, which plaintiff offers to pay, and for which defendant should have judgement.

REVERSED.

We have had certified the opinion in this case, and place it on the files of this court for inspection, as well as the still later case of *Thompson vs. Ware, et ux:* following the case of *Butler vs. Delano, et al.*, and which we also here print in full. It is as follows:

BECK, J. The plaintiff's title, upon which he seeks to recover the land, is based upon a tax sale and deed. The defendants, in their equitable answer, allege that there was no sale of the lands for taxes; that there were no bidders therefor, and that

there was no notice whatever of the sale, and no adjustment of a prior sale to the time where the lands are said to have been sold. Under the issue found upon these averments, a witness who was a deputy treasurer at the time of the alleged sale testified: "These lands were not bid off in separate parcels, they were not publicly offered for sale, were not cried out by the treasurer at the time. * * * * They were not offered for sale by the treasurer on that day, prior to making selections, nor at any other time. * * * * "As I said, the tax sale stood open, I meant it was left open from day to day, it was not adjourned to any particular time." There is nothing found in the record contradicting this testimony. It establishes the fact that there was no public sale of the lands, and that the alleged sale occurred at a time to which there had been no adjournment of a private sale. The deed and tax records show the sale to have been in the month of June. This proof overcomes the *prima facie* evidence of the sale presented by the deed, and establishes the fact that there was no sale in contemplation of law. Following *Butler vs. Delano*, March T., 1876, at Council Bluffs, we hold plaintiff's tax deed void.

AFFIRMED.

Now in the light of these cases and the evidence in this, how can these tax titles be upheld by this court? These cases also refute the idea so persistently enforced by the learned counsel for appellant, to-wit, that these tax deeds are conclusive upon this question of the sale and the manner of it.

II.

Again, we argue that there was no sale in fact of any kind by the treasurer, and could not be of very necessity under the evidence in this case.

The statute, Revision, Sec. 763, provides: "On the first day of October in 1860, and in each year thereafter, the county

treasurer is required to offer at public sale at the court-house, etc."

Here the time is fixed by statute when the sale shall take place, and of this time all parties are notified by law, and any failure to give proper notice of a tax sale on the first Monday in October would not avoid the sale.

But by Sec. 776 it is provided: "If from neglect of officers to make returns, or from any other good cause, real property cannot be duly advertised and offered for sale on the first Monday in October, it shall be the duty of the treasurer to make the sale on the first Monday of the next succeeding month in which it can be made, allowing time for the publication as provided in this act."

It will at once be seen by this section that after the first Monday of October has passed there is no fixed time for making such tax sales, and the time is made to depend entirely upon the exigencies of each case and upon notice to be given by him as provided by Sec. 764, *supra*. If the sale is not made on first Monday of October then until the time is so fixed and the notice is given there is no power of sale whatever.

How was it in the case before the court? The pretended sale on January 4, 1864, was the sale which the statute required to be made on the first Monday of October, 1863. No sale was then held or pretended to have been held. Now let us see whether any notice was given of a sale to be held on January 4, 1864, for without such notice no power existed to make such sale. By reference to the evidence of Wm. Gardner, at record, page 75, and Exhibit A, page 76, also same witness at pages 65-6 and Exhibit A, it will at once be seen that the notice upon which this sale was predicated was dated October 26, 1863, and fixed the time for the sale January 4, 1863. The treasurer, at page, record, 174, testifies: *When it was published in the paper it was published 1863 instead of 1864. I did not publish any other notice.* The deeds offered in evidence are not conclusive upon complainant as to any of these matters.

Now, how could the treasurer, under such a notice, acquire jurisdiction to make a sale for taxes on the 4th day of January, 1864? It is utter folly to argue that this sale was a sale in fact, for such a sale in fact implies power and jurisdiction to make it at the time made. As well might it be claimed that the treasurer had the power on the 4th day of January, 1864, to sell these lands without giving any notice whatever. This was not simply an irregularity or informality in the notice, but absolutely no notice of a sale to take place January 4, 1864.

These facts did not appear in *Phelps vs. O. Meade*, 41 Iowa, 470, nor was the power of treasurer to make such sale before that court in that case.

III.

The sale advertised to take place in 1862, could not by adjournments have been carried past the next annual sale of October, 1863, so as to have given any authority to the treasurer to sell on the 4th day of January, 1864.

If, however, such adjournments could have been made, yet upon comparing the list of unsold lands at sale of 1862, with the lands embraced in this suit, it will be found that the nw. ¼ of nw. ¼ sec. 7, and the n. ½ of nw. ¼ and n. ½ of ne. ¼ sec. 3, and n. ½ nw. ¼ sec 19, and se. ¼ of ne. ¼ sec. 18, all in township 74, range 35, and the se. ¼ of ne. ¼ sec. 30, township 76, range 35, were not included in the tax lists of 1862; (See Wm. Gardner's deposition, page 142, question 5, and page 143, cross-examination, question 5, and exhibit "A." page 143 and 144.) So that as to these lands there could be no power of sale by any adjournments to January 4, 1864. What has already been said we think fully answers the 1st, 2d and 3d points in argument of appellant.

IV.

We proceed to answer his 4th proposition. In doing so, we say that appellant is in no sense an innocent purchaser. Because

1st, At the bringing of this suit he was a purchaser holding by an unexecuted contract, owing thereon to Reynolds and Meade $4,000. (See his answer to cross-question 28, page 153,) where appellant says: "But the whole contract was paid up into about $4,000 at the bringing of this suit, and in June, 1873, it was all paid up but about $1,600." Says: the deeds for the land in suit were not filled out when this suit was brought, but states he was entitled to them, having made large payments upon the contract in advance of the terms of it; says Reynolds desired him to fill up deeds before suit brought, as he learned there would be suits about it, and did not want himself or Meade sued, and sets out copy of contract with Reynolds, at pages 156, 157 and 158.

Now we need not cite further from appellant's testimony to show that he was not in a position to be entitled to claim the benefit of the principle applicable to an innocent purchaser. But were it necessary we might quote from appellant's testimony at page 148, where he says that as early as 1870 or 1871, he heard that this tax sale was illegal or fraudulent from attorneys for parties holding the original title, and states the information he had of them. But the law is so well settled that the party holding under an executory contract, is not a *bona fide* holder, that we need but cite a few cases and then dismiss this part of the argument.

In *Boone v. Chiles*, 10 Peters, U. S., R. 211–212, this court says: "Notice must be denied previous to and down to the payment of the money *and* the delivery of the deed." And see authorities cited at page 212.

In *Villa vs. Rodriguez*, 12 Wallace, p. 338, this court uses this language: "This doctrine invoked has no application where the rights of the vendee lie in an executory contract. It applies only where the legal title has been conveyed and the purchase money fully paid."

See also *Watson vs. Phelps, et al.*, 40 Iowa, 483, and cases cited.

But the answer of Callanan does not contain any sufficent averments to entitle him in any state of case to such protection under the rule established by this court in *Boone vs. Chiles, supra*, page 212, and cases there cited.

Not only so, but in this class of cases the respondent claims by a title in no manner derived from or dependent upon plaintiff's title, and when he purchases under that title, he must take it subject to all imperfections, and he is in no better condition than the tax title purchaser.

To hold otherwise, would be to place the stream higher than the fountain. This principle could only be applicable as between purchasers in the same line of title.

In *Kerr vs. Watts*, 6 Wheaton, pp. 559, 560, this court says: "At first view it would seem that the principles so often applied to the relief of innocent purchasers are applicable to the case of these defendants wherever the facts sustain the defense. But it will not do at this day to apply this principle to the purchasers of military land warrants derived under the laws of Virginia. In all the courts in which such cases have come under review, the purchasers have been considered as affected by the record notice of the entry, and also of the survey, such as *it legally ought to be made*, as incident to or bound up in the entry. It is altogether a system *sui-generis*, and subsequent purchasers are considered as acquiring the interest of the entror and not necessarily that of the State. So that purchasers under conflicting entries are considered as purchasing under distinct rights, *in which case* the principle here contended for do not apply, since the ignorance of a purchaser cannot make that title good against an independent and better right,"

In the case at bar the plaintiff claims under the general government, and the defendant claims under the tax laws of the State, and these titles have no connection the one with the other, and of very necessity there can be no such thing as a bona fide purchaser under tax title in any case as against

the patent title owner. See also, Willard's Eq., pp. 151 to 153.

We do not propose to discuss the fifth point of appellant's argument because we have never contended in this case that the warrant was an essential element in this sale under the rulings of the state courts.

We do, however, controvert the last point in argument of appellant as stated or sought to be applied and enforced. In equity it is a fundamental rule that an offer and willingness to pay is equivalent to payment, as the court has power to withhold its decree until performance is complete, and no court of equity ever required a man to pay that which of right he should not pay if he is not entitled to the land. But complainant has the right to say no title passed by the deed, or have it declared void for fraud, without in any manner under the statute being required to pay the taxes whether his suit be at law or in equity. The language of the statute quoted is "permitted to question *the title acquired* by the treasurer's deed." If there was no sale the deed was void, and not merely voidable and recovery could be had in such case at law without payment or offer of payment of taxes. (*Corbin vs. Beebee*, 36 Iowa.) Again, the payment required by the statute is of the taxes due, the tax title purchases and not the government. The bill asks an accounting, and the case now stands referred to a master to inquire as to the taxes paid and unpaid and for this purpose is still pending in the court below.

An error has been discovered in the printed record in setting out the tax deeds at pages 178 to 188, and the following stipulation is now placed on file, (see same) to-wit:

IN THE SUPREME COURT OF THE UNITED STATES.

MICHAEL HURLEY, *Appellee*,
vs.
JAMES CALLANAN, *Appellant*. } *Stipulation.*

It is hereby stipulated and agreed in the above case that the

But the answer of Callanan does not contain any sufficent averments to entitle him in any state of case to such protection under the rule established by this court in *Boone vs. Chiles, supra*, page 212, and cases there cited.

Not only so, but in this class of cases the respondent claims by a title in no manner derived from or dependent upon plaintiff's title, and when he purchases under that title, he must take it subject to all imperfections, and he is in no better condition than the tax title purchaser.

To hold otherwise, would be to place the stream higher than the fountain. This principle could only be applicable as between purchasers in the same line of title.

In *Kerr vs. Watts*, 6 Wheaton, pp. 559, 560, this court says: "At first view it would seem that the principles so often applied to the relief of innocent purchasers are applicable to the case of these defendants wherever the facts sustain the defense. But it will not do at this day to apply this principle to the purchasers of military land warrants derived under the laws of Virginia. In all the courts in which such cases have come under review, the purchasers have been considered as affected by the record notice of the entry, and also of the survey, such as *it legally ought to be made*, as incident to or bound up in the entry. It is altogether a system *sui-generis*, and subsequent purchasers are considered as acquiring the interest of the entror and not necessarily that of the State. So that purchasers under conflicting entries are considered as purchasing under distinct rights, *in which case* the principle here contended for do not apply, since the ignorance of a purchaser cannot make that title good against an independent and better right,"

In the case at bar the plaintiff claims under the general government, and the defendant claims under the tax laws of the State, and these titles have no connection the one with the other, and of very necessity there can be no such thing as a bona fide purchaser under tax title in any case as against

the patent title owner. See also, Willard's Eq., pp. 151 to 153.

We do not propose to discuss the fifth point of appellant's argument because we have never contended in this case that the warrant was an essential element in this sale under the rulings of the state courts.

We do, however, controvert the last point in argument of appellant as stated or sought to be applied and enforced. In equity it is a fundamental rule that an offer and willingness to pay is equivalent to payment, as the court has power to withhold its decree until performance is complete, and no court of equity ever required a man to pay that which of right he should not pay if he is not entitled to the land. But complainant has the right to say no title passed by the deed, or have it declared void for fraud, without in any manner under the statute being required to pay the taxes whether his suit be at law or in equity. The language of the statute quoted is "permitted to question *the title acquired* by the treasurer's deed." If there was no sale the deed was void, and not merely voidable and recovery could be had in such case at law without payment or offer of payment of taxes. (*Corbin vs. Beebee*, 36 Iowa.) Again, the payment required by the statute is of the taxes due, the tax title purchases and not the government. The bill asks an accounting, and the case now stands referred to a master to inquire as to the taxes paid and unpaid and for this purpose is still pending in the court below.

An error has been discovered in the printed record in setting out the tax deeds at pages 178 to 188, and the following stipulation is now placed on file, (see same) to-wit:

IN THE SUPREME COURT OF THE UNITED STATES.

MICHAEL HURLEY, *Appellee*,
vs.
JAMES CALLANAN, *Appellant*. } *Stipulation.*

It is hereby stipulated and agreed in the above case that the tax deeds as printed in the record in this cause at pages

178 to 188 inclusive, are not full and complete in their recitals, and that the original deeds offered in evidence on the hearing in the court below contain the following recitals at the end of the first description of said lands therein, viz: "And whereas, the taxes assessed upon said respective pieces of real property for the years aforesaid, remained due and unpaid at the date of the sale hereinafter named; and whereas, the treasurer of said county did on the 4th day of January, A. D. 1864, by virtue of the authority in him vested by law at the sale begun and publicly held on the first Monday in January, A. D. 1864, expose to public sale at the court-house in the county aforesaid in substantial conformity with all the requisitions of the statute in such cases made and provided, the several pieces of real property above and hereinafter described separately, for the payment of the taxes, interest, and costs then due and remaining unpaid on each of said pieces of real property respectively."

And this agreement is made to correct the error in said printed record.

Signed at Des Moines, Iowa, this 20th of November, A. D. 1876.

GEO. G. WRIGHT,
For Appellant.

MICHAEL HURLEY,
Appellee.

We insist that upon the law and facts of this case the decree should be affirmed.

SUBMITTED.

MICHAEL HURLEY,
Appellee.

PHILLIPS, GOODE & PHILLIPS, *Counsel.*

Durant & Hoover for Hurley.

IN THE

SUPREME COURT

OF IOWA.

R. G. PHELPS,

vs.

ORLANDO MEADE, JAMES CALLANAN AND HENRY MCDERMOTT.

June Term, 1875.

IN EQITY.

APPEAL FROM THE JUDGMENT OF THE CASS DISTRICT COURT.

PHELPS & DELANO, *for Appellant.*
BARCROFT, GIVEN & DRABELLE, *for Appellee.*

AGREED ABSTRACT OF RECORD.

On the 9th day of January, 1875, plaintiff filed in the Cass District Court his

PETITION,

stating his cause of action, as follows:

1. That he is the unqualified and absolute owner in fee simple of the following described premises, to-wit: The northeast quarter of the northeast quarter of section number 13, Township number 77, Range number 35 west, containing forty acres of land, according to the government survey; that his said title to said land is derived by purchase from the government of the United States and divers subsequent conveyances fully vesting title in him.

II. The defendants claim some title or interest in said lands by virtue of a tax deed thereon from the county treasurer of said Cass county to the defendant, Meade, and the subsequent conveyances thereunder; that said title is claimed under and by virtue of a tax sale held by said treasurer, on the 4th day of January, 1864, and tax deed executed thereunder on or about the 4th day of April, 1867.

III. That said tax sale and deed are absolutely void and never conferred any title or interest to defendant, Mead, nor to any of the defendants; nor did the subsequent conveyances of the said Meade confer any title therein to his grantee or to either of defendants; that there never was any sale, in fact, of said land at said tax sale; that the treasurer never offered the same for sale in any manner, at any time or place, and that the same was not bid in by said Meade, nor by any person whatever at said sale; that said tax certificate and deed were procured by the fraud and collusion of the treasurer and said Meade without there being any sale had or made of said land at said sale; that said treasurer, with the knowledge and consent of said Meade, at his request, and for his benefit, withheld said land from the regular tax sale on the 4th day of January, 1864, and refused to sell the same; and long afterwards, and at a time not authorized or permitted by law, secretly and fraudulently issued tax certificates to said Meade, on said land, and dated the same back to correspond with the said regular sale of January 4, 1864.

That all this was done with said Meade's consent, and to eneble him to defraud the plaintiff in his said title to said lands; that the other defendants were fully apprised of this fraud in procuring said certificate and deed at the time the conveyances of said land were executed to them, and they took the same with full knowledge of the manner in which said Meade obtained said tax deed.

Plaintiff asks that said tax deed be set aside and declared null and void, and that he be decreed to be the full and abso-

lute owner of said lands, free from all claims, liens or interests of any kind arising from or under the said tax sale and tax deed.

On the 9th day of January, 1875, the defendants filed their

ANSWER

to the petition, as follows:

I. Deny the allegations of the first paragraph of plaintiff's petition.

II. Have no knowledge or information sufficient to form a belief as to the truth of the first clause of plaintiff's second paragraph.

III. Admit that they claim title under and by virtue of the tax sale, and deed thereunder, as alleged in the second clause of plaintiff's second paragraph.

IV. Deny that said sale was void, and conveyed no title or interest to said Meade.

V. Deny that the conveyance from Meade to Callanan did not convey title to said Callanan; and that the conveyance from said Callanan did not convey title to said McDermott.

VI. Allege that there was a sale of said land at said tax sale; that the treasurer of said county, on said 4th day of January, A. D. 1864, offered said land for sale at public auction for delinquent taxes thereon; that the same was then and there regularly bid in by said Meade, and struck off and sold by said treasurer to him; that a certificate of sale of said land was then executed and delivered to said Meade by said treasurer.

VII. Deny that said certificate, or deed thereunder, were issued by fraud or collusion of said treasurer and said Meade without there being any sale of said land at tax sale.

VIII. Deny that said treasurer with the knowledge, or consent of said Meade, or at his request, or for his benefit, with-

held said land from regular tax sale on the 4th day of January, 1864, or that he refused to sell the same until long afterwards, or that he sold the same at a time not permitted by law; or that he secretly or fraudulently issued tax certificates to said Meade; or that he dated said certificates back, to correspond to said regular sale of January 4, 1864. Deny that any of said several matters, alleged to have been done by said treasurer, were done, either with or without the consent of said Meade, to enable him to defraud the plaintiff in his title to said land.

IX. Deny that said Callanan and McDermott, or either of them, were apprised of said fraud, or any fraud, in the procuring of said certificate and deed, or either of them.

X. Allege that said sale, and certificate and deed executed by said treasurer thereunder, were regular, legal, and in all respects in compliance with the statutes of the state in relation thereto.

XI. And the said James Callanan, for himself, says: that at the time he purchased said land from said Meade; at the time he paid the purchase money thereof, and at the time said Meade executed and delivered a deed of conveyance therefor, defendant had no knowledge or information of any fraud, collusion, illegality or irregularity in the said sale and conveyance of said land by said treasurer to said Meade for taxes, but purchased the same for a full and adequate consideration, and in good faith, relying upon the validity of said tax sale.

XII. McDermott, for himself, says: that he purchased said land from said Callanan for a full and adequate consideration without any notice of any fraud, irregularity or illegality in the previous sale and conveyance thereof by said treasurer to said Meade; that he is the absolute owner of said premises, in fee simple, by regular chain of conveyance from the treasurer of Cass county, Iowa, in pursuance of legal and verbal sale thereof for delinquent State and county taxes due thereon.

Defendants ask to be dismissed with their costs.

By stipulation this cause was submitted and heard upon the evidence taken in the case of Michael Hurley vs. Dexter Reynolds, O. Meade, and James Callanan, lately pending in the Circuit Court of the United States, District of Iowa.

And on the day of February, 1875, this cause came on to be heard upon the pleadings, evidence and proofs of the parties thereto; and thereupon plaintiff introduced chain of title to land in controversy from the United States and subsequent grantors to himself.

Afterward plaintiff introduced

DEPOSITION OF E. W. DAVENPORT,

filed February 28, 1873, as follows:

I was employed in the treasurer's office of Cass county on the 4th day of January, 1864. I was in the office of the treasurer on the 4th day of January, 1864, at a tax sale held there that day. Don't remember the exact manner in which the same was conducted. Treasurer was in the office most of the day. Warford came to Cass county to make purchases for Orlando Meade and Dexter Reynolds. I think I saw him there on January 4th, 1864. He made purchases for both; but how he made them I do'nt know. Warford was in Lewis but a day or two. I do not now remember that the treasurer offered any land for sale for taxes delinquent on the 4th day of January, 1864. I was in the office, and presume I could have heard him if he had offered them. I do not remember hearing any bids made. After Warford left it was understood that Meade and Reynolds were the purchasers of all the lands on which there were not over two or three years' delinquent tax due. How this arrangement was made between treasurer and Warford, as the agent of Meade, I am not now able to state; I know this fact more from the results connected with my la-

bors in the office after January 4th, 1864, than from any agreement I remember having taken place between Dickerson and Warford. I think I had this understanding at the time I commenced making out the certificates, which were made out in accordance therewith. It is possible that the treasurer offered the lands at public outcry, parcel by parcel, and so bid off and sold them, and I not remember it. I do not know what the understanding was about residents purchasing lands; the results of my labors showed me that they had such, and all pieces they wanted. I purchased some for myself and friends at that sale. I don't know whether they were offered at public outcry or not. I presume I heard Warford and Dickerson talk the matter over, and also that I had conversation with them about it. Don't remember that there was any competition at said sale.

Cross-examination:

I cannot state that there was any agreement or combination among the bidders at that sale. I bought some land at that sale, and think it is all disposed of. I certainly thought the sale was correct, or I should not have made purchases for myself or friends. I did not know of anything at the time being done which I supposed to be wrong. I think it was designed that there should be a fair sale. I know of no one wanting to bid that did not have a chance.

Re-examination:

It seems to me now, that if all the lands had been regularly offered it would have made an impression on my mind, and I should have remembered something about it.

At the time I went to work to make out the certicicates, I understood there was an arrangement by which residents myself, and others about the office, were to have what we wanted, and the balance to be marked sold to Meade and Reynolds. Cannot say that I so understood it at the time Warford was there; I have no positive impression about it.

Plaintiff then introduced

DEPOSITION OF ISAAC DICKERSON,

filed July 8th, 1873, as follows:

I was county treasurer in Janurry, 1864. I conducted a tax sale on the 4th day of January, 1864. I do not now remember the form in which the sale was conducted, but it was the intention to conduct it in the manner prescribed by law. The sale was opened on the 4th day of January, 1864, and continued under that date until it was closed. The certificates were commenced and made out as soon as they could be in the regular course of business.

I had some correspondence with Warford in relation to the purchase of the lands before said sale; possibly two or three weeks before. In the first letter he made inquiry about the amount of lands delinquent and to be sold, and stated he desired to invest a considerable amount of money at that tax sale. Do n't remember whether any of these letters instructed me how I should proceed in marking off lands to Meade and Reynolds. The sale was made in the usual manner. I opened the sale by public outcry, on the 4th day of January, 1864, and my clerk entered up the bids and made the certificates. I was in the office while sale was going on. Do n't remember how Warford and others made their bids, it having been a long time ago. It is a fact that my clerk checked off lands at said sale as sold to Reynolds, Meade and others at a time when there was no one present but he and I; but it was after such lands had been designated at the tax sale and marked on list.

Cross-examination:

The evidence I have given of the January 4th sale is simply my present recollection of the facts. All the land was not sold at the January sale, by some seven or eight thousand acres. The sales were made in my office; they were public

and made after public outcry. They were open to all parties. I did not do anything to prevent competition and a fair, open sale of the lands. I know of nothing being done to prevent the same.

Re-direct examination:

There were 20,000 or 30,000 acres sold at the January sale, 1864.

Plaintiff then introduced

DEPOSITION OF WILLIAM WADDELL,

filed July 8th, 1873, as follows:

I was in attendance on the tax sale January 4th, 1864, in Cass county, Iowa, as the clerk of the board of supervisors, but did not make any record of the sale on that day. Can't say now who bid off lands on that day. It is my impression that Jno. Warford was not present at said tax sale on January 4th, 1864. I think Dickerson told me, prior to the sale of January 4th, 1864, that he had received letters from the agent of easten parties, Meade and Reynolds, proposing to invest some money at tax sales, and the kind of lands they wished to purchase. I think one desired his lands located in the north part of the county, and the other in the south; but can not state that I heard this prior to said sale.

Cross-examination.

I think the sale on January 4th, 1864, was opened by the treasurer by public outcry; think the treasurer called off the delinquent lands from the tax list, and as parties said they would take them, marked them sold on the same list; I think lands were so called and sold after that day. On the 4th day of January, I think, I checked on the advertised list the lands sold; assisted in checking on plats, and marked some as sold on tax lists opposite each tract sold. I think the treasurer called the tracts separately as they were described on the list.

Treasurer, in calling and striking off to bidders, spoke so that all in the room could hear, I think. Think I saw Warford in the treasurer's office the next week after the 4th of January, 1864. His business was to see about purchasing lands at tax sales for Meade and Reynolds; was there about two days. Think all lands sold at sale, January, 1864, were entered on my register as sold on the 4th day of January, 1864.

Plaintiff then introduced

DEPOSITION OF WILKINS WARWICK,

filed July 8th, 1873, as follows:

Have been treasurer of Cass county since 1866. Have examined the books in my office in relation to tax sale of January 4, 1864. Said sale covers 135 pages of treasurer's record—pages seventeen inches long and twenty inches wide. It would take me about thirty days to make out certified copy of said sale of January 4th, 1864. All sales made in south part of county, except about 1,000 acres, were to Reynolds; and Meade's purchases were all in the north part. Reynolds has 512 descriptions, and Meade, 522. The former paid for purchases made on 4th day of January, 1864, $4040.79, and the latter $3001.31.

The register of tax sales shows the number of sales made on 4th January to be 1526, and the whole amount paid thereunder about $9,500.

Register of sales shows no adjournment from said 4th January.

Cross-examination:

Register of sales shows no sales for less than the entire tract.

Find that about 2,500 acres were unsold at January sale, and sold at March, April and June adjourned sales thereafter.

Have sold lands at tax sale. The greatest number of descriptions I ever sold in one day was 904, and there was some

competition. Said sale was commenced about ten o'clock, a. m., and concluded about four o'clock, p. m. I think a person could sell and check off 1500 or 1600 descriptions of land in one day if there was no competition among bidders; but it would take a good day's work to do so.

Re-direct examination :

I can cry out and sell five or six tracts of land in a minute, if there is but little competition.

Plaintiff then introduced

DEPOSITION OF E. W. DAVENPORT,

filed May 4th, 1874, as follows:

My impression is that Jno. Warford was not present at said sale, on January 4th, 1864. Think he was there ten days or two weeks after. My impression is that he came one day and went the next. I must have been in the treasurer's office during the business hours of the day he was there.

I am of the opinion that not a piece or tract of land sold to Meade and Reynolds was offered separately in forty acre tracts. Do n't think any of the lands certified to Meade and Reynolds were sold at public outcry at the time Warford was there. I think my guide in certifying particular prices to said Meade and Reynolds was that each party was to commence at a certain point and take in rotation until a certain amount in dollars and cents was reached. It was understood that if any tract or piece was wanted by any one in the town or county, they were to have it ; if not it was to be certified to Meade and Reynolds, provided said lands had not more than two or three years' delinquent taxes thereon. While I was making out certificates for Meade and Reynolds I made selections for others. This was understood by all parties.

Cross-examination :

I purchased lands at the Jauuary 4, 1864, sale for M. D. Bartlett, M. D. Wheeler, and myself. M. D. Bartlett is my sister and M. D. Wheeler is my cousin. M. D. Wheeler does not now retain any of the lands purchased for her at said sale. M. D. Bartlett has only a few pieces, and I have none. My impression is that there was no offer of lands, or any regular sale ; but any party coming in, either on the 4th of January or afterward, for two months, had what they wanted, and all sales were considered as of January 4, 1864.

Plaintiff then introduced the

DEPOSITION OF O. S. CHURCHILL,

filed October 11, 1873, as follows:

I took down a portion of the testimony of James Callanan, in the case of *Everett vs. Reynolds et al.* My recollection is that he stated that he was to look after Meade's and Reynolds' lands, pay the taxes on the same, and was to have all he could make in the sale of said lands, over and above the taxes, penalty, interest, costs, and a bonus. Have no distinct recollection of what he testified to.

Plaintiff then introduced

DEPOSITION OF JAMES W. BROWN,

filed October 11, 1873, as follows:

Had a conversation with defendant Callanan about the time of the trial of the case of *Everett vs. Reynolds et al.*, which, in substance was that all the interest said Callanan had in the lands in controversy was the surplus he might realize from the sale of said lands after paying Reynolds and Meade the taxes, penalty, interest, costs, and a bonus. Am not positive that Callanan himself told me this, or I received the information from others.

Plaintiff then introduced

DEPOSITION OF J. N. CORNISH,

filed February 2, 1874, as follows:

Knew John Warford in latter part of 1863 and early part of 1864. Rode with him in stage coach from Adel to Lewis, either latter part of November, 1863, or about January 17, 1864; can't tell which.

And thereupon defendants introduced

DEPOSITION OF DEXTER REYNOLDS,

filed October 9, 1873, as follows:

I purchased lands in Cass county, Iowa, at tax sale of January 4, 1864, part in my name and part in O. Meade's. I purchased through John Warford, my agent, and my object was to purchase only such lands as were most likely to be redeemed, in order to get the money invested, penalty, and interest. I purchased only whole tracts.

Never instructed Warford to bid in lands at said sale in my name and that of Meade for the purpose of preventing competition at said sale; there was no necessity for it, there being more lands for sale that year than there were buyers for it. Know of no combination among the buyers at said sale. Have conveyed said lands to defendant Callanan. I had lands purchased in the name of Meade simply for my own accommodation in the investment of some trust funds in my hands, which I did not wish to have confused with my own.

Defendants then introduced

DEPOSITION OF JOHN WARFORD,

filed May 23, 1873, as follows:

I purchased land in controversy at the tax sale of January, 1864, in the name of Meade, for Dexter Reynolds. Isaac Dickerson made the sale, which was public; Dickerson called off the lots and tracts as they were advertised, and when so called they were bid for and sold.

Cross-examination:

Arrived in Lewis in the fore part of January, 1864, and remained there until the evening of the second day after arriving. A man by the name of Cornish was in the stage coach the time I went to Lewis (January 17th, 1864. See testimony of said Cornish.) My recollection is that I bought lands both on the first and second days I was there. Was engaged about twelve hours, altogether, in making my purchases. Sale was made by the treasurer in his office; he and I sitting near a table. Think the lands were sold from the advertised list, and were checked thereon by the treasurer. No record or entry was made at the time of the sale. I kept no record except the advertised list; and when I purchased a piece of land I made a mark or check opposite the same. Treasurer and I did not select the land which I desired to buy prior to our sitting down to the table. I purchased only on the two days I was there. While I was purchasing there was no bidding against me, and no land was sold to any other person while I was there. The investment amounted to about seven thousand dollars. The treasurer only called off those lands which were delinquent for three or less than three years; these I bid in. The treasurer read the tracts by their numbers, and I said I would take the piece as called. This was done in a conversational manner. Certificates were delivered to me at Adel, Iowa, by Davenport, some five or six weeks after the purchase, as soon as they were made out.

Defendant then introduced the

DEPOSITION OF ISAAC DICKERSON,

filed May 2d, 1874, as follows:

All the lands marked sold on 4th January, 1864, were not sold on that day. Some were sold on that day, and the rest from day to day for two or three weeks thereafter. Sale was made by publicly offering the lands, and marking on the tax

list those that were bid off. The sale was continued right along for two weeks. The reason why all the lands sold at the January sales, 1864, were marked sold on January 4th, 1864, is that the sale having commenced on the 4th day of January, and continued from day to day till closed and adjourned, I considered it right and proper to record them all as of that date. If I had dated them any differently, or after January 4th, 1864, the record would have shown they were made at a different sale, or at a different time from the time the sale was advertised to take place, which was January 4th, 1864. All the sales I made while the sale was continued from day to day during those two weeks, I entered as made the day of commencement of sale. Thus, when sale was adjourned, after the second week, or about the 18th of January, 1864, till March, the sales made then were entered at that adjourned sale as of the day it commenced. It was my custom at the general sale to enter all the sales as of the date of the commencement of that sale.

Cross-examination:

When I testified first in this case, I had not examined the records for the purpose of refreshing my memory. Since then I have done so, and am more certain in my testimony. I more fully remember all the circumstances of the sale of January, 1864, than I did in making my former deposition.

Re-direct examination:

The land was sold by being publicly offered; Warford said that he would take the land, and the same was checked to him on the advertised list, or tax book. Sales were not entered on the register at the time; they were only marked or checked, and afterward entered on the register. It was as much as six weeks before we had all the sales entered and certificates made out. I opened the sale, offered the land, struck it off to the bidder, and made a mark opposite each tract, designating the purchaser, either on the tax list or ad-

vertised list. Davenport afterwards wrote on the duplicate in ink the name of the purchaser of each tract, and carried them to the register of sales. Meade's and Reynolds' lands were all so sold. While Warford was purchasing there were no other bidders present, and but a single tract sold other than to Meade and Reynolds. When I gave my deposition in the case of *Campbell vs. Planter, et al.*, I was intoxicated, and knew not what I was saying or doing, and I consider it a fraud on me in getting it in that way.

Defendant then introduced the

DEPOSITION OF JAMES CALLANAN, JR.,

filed October 15th, 1873, as follows:

At the commencement of this action I had an interest in the lands in controversy by a contract of purchase made February 1st, 1868, between Dexter Reynolds and myself, embracing said lands, upon which I had then paid more than four-fifths of the purchase money; Reynolds being the owner of all the lands in the name of Meade. The contract of purchase from Reynolds embraced nearly fifty thousand acres, and in January, 1872, I paid him the full amount of the purchase money—over thirty thousand dollars—and received deed from Meade February 1st, 1873.

From a personal examination of the registers of sales of ten or twelve counties in the western part of the state where these lands are, and by inquiry and information, I find that there was no competition at any tax sales prior to 1865-6—very little, if any, in 1865—the reason being that wild land was not considered worth much more than the taxes due upon it, and much of it not worth that. No person would purchase fractional pieces and pay the tax upon the whole tract. The object of the tax purchasers was to get the penalty and interest on the investment, and not to get the land; and further, because there was much more land for sale for taxes than parties to buy.

Previous to my purchase I had no notice of any fraud or pretense of fraud in the tax sales of January, 1864, to Reynolds and Meade; but subsequent thereto, in 1870 or 1871, I first heard some statements that said tax sale was illegal and fraudulent; but upon inquiry, from parties to the sale, the treasurer, Warford and others, I found that such statements were incorrect. I was assured by them that there was no question about the good faith, fairness and publicity of said tax sale; that neither of them had any interest to make it otherwise, and every reason to make it good. Warford stated that his principal, Reynolds, was very particular in his instructions for him to be careful to see that the sale and purchase was made properly and according to law.

Though the land was purchased in the name of Meade, yet it was in fact for Reynolds, from whom I purchased. Reynolds had it purchased in the name of Meade, by the consent of the latter, for convenience in handling some trust funds, which he desired to keep separate from his individual funds.

Cross-examination:

The land in controversy was paid for under the said contract, and deed executed to me prior to the commencement of this action.

From an examination of the records of tax sales of Cass county for the sales of the year 1864, I find that the land delinquent and advertised was not all sold. I learned this also from the treasurer who conducted said sale, and also from the treasurer succeeding him.

I had conversation with some persons, and also testified in court in the case of *Everett vs. Reynolds and Callanan*, in relation to my purchase from Reynolds. I never stated that all my interest in the lands was the surplus I might receive from the lands after paying Meade and Reynolds the taxes, penalty, interest, costs and a bonus—but I did say that I bought the land for the amount of the taxes, penalty, interest,

tract, designating the purchaser, either [illegible]

and a little bonus to cover any expense and trouble they might be put to in making conveyance of the lands to me, &c.

Defendant thereupon introduced in testimony the following

DEEDS OF CONVEYANCE,

to-wit:

Tax deed from Wilkins Warwick, treasurer of Cass county, to Orlando Meade, dated January 31, 1867; recorded January 31, 1867, in book J—pages Deed Record of Cass county, Iowa.

Deed in fee simple from said O. Meade to James Callanan, Jr., dated February 1, 1873, and filed for record in the recorder's office of Cass county, Iowa, on the 14th day of March, 1873, in book Z, page 476.

Deed from James Callanan Jr., to Henry McDermott, dated the 2nd day of September, 1874, and filed for record in the office of the recorder of Cass county, Iowa, on the day of , 1874, and recorded in book , page .

The above and foregoing being all the evidence and proofs offered by either party, the court thereupon entered a

DECREE

dismissing plaintiff's bill of complaint and cause of action filed herein, and entered judgment for costs against plaintiff.

And on the 10th day of April, 1875,

NOTICE OF APPEAL

was properly served upon the defendant.

Nos. 328 & 329 | U. States vs. Phila. & Southern Mail Co. | Page 302

Fair View Plant

Union Plant

Track of Descending Vessels

Direction of Current

Alliance Plant

Monsecure Plant

St. Sophie Plant

Landing of Packet

Bradish Johnson about the time of collision

Track of Descending Vessels

Track of Neafie

Track of ascending Vessels

Bertrands

Wreck of Ella C.

Point Upper

Poverty Point

Point Lower

Track of Neafie

Eddy

Eddy

Eddy

Eddy

Eddy

Track of Descending Vessels

apparent Track of Juniata

Track of Descending Vessels

Direction of Current

N
NE
E
SE
S
SW
W
NW

St. Rosalie Plant

"Myrtle Grove" Wilkinson's Plantation & Sugar House

Plan B.
Filed by Deft April 30 1875.

Explanation of Drawing. Red & Black Line Track of Neafie. The Space covered by Red dots is Shoal & Eddy Currents. Red & Black arrows direction of Current
Continuous Red Line Course of Decending Vessels
" Black " " Ascending "

Plan R.R.

also designated as

8

St Rosalie Plant.n

Willows

Eddy

Spoon

High

Descending

Track of Vessels

W

W.N.W.

N.W.

W.S.W.

S.W.

S.S.W.

N.N.W.

S

N

S.S.E.

N.N.E.

S.E.

N.E.

S.S.E.

E.N.E.

E

W.N.W.

Poverty Pt

Monsecure Plant.n

Union Plant.n

2

Myrtle Grove Plant.n

"Juniata" Stop's Head

Neafie & Barge

Angle which they struck "Juniata"

Eddy

St Sophie Grocery

Track of Vessels Ascending

Willows

United States

Plan R.R.

co designated as

3

St Rosalie Plant^{n}

Willows

Bay

Woods

High

Descending

Track of Vessels of Vessels Ascending

N

N.N.E.

N.E.

E.N.E.

E

E.S.E.

S.E.

S.S.E.

S

S.S.W.

S.W.

W.S.W.

W

W.N.W.

N.W.

N.N.W.

Monsecure Plant^{n}

Poverty Pt

Union Plant^{n}

2

W.N.W.

E.S.E.

Myrtle Grove Plant^{n}

"Juniata" Steamboat

Neafie & Barge

Angle which they struck "Juniata"

Bay

St Sophie Grocery

United States

Track of Vessels Ascending

Descending

Track of Vessels

S.S.W.

N.N.W.

S

N

S.S.E.

N.N.E.

S.E.

N.E.

E.S.E.

E.N.E.

E

W.N.W.

E.S.E.

High Woods

Poverty Pt

Bayou

Monsecure Plant.n

Union Plant.n

Myrtle Grove Plant.n

"Juniata" Stern Boat

Neafie & Barge

Anise which they struck "Juniata"

St Sophie Grocery

St Sophie Settlement

Willows

High Woods

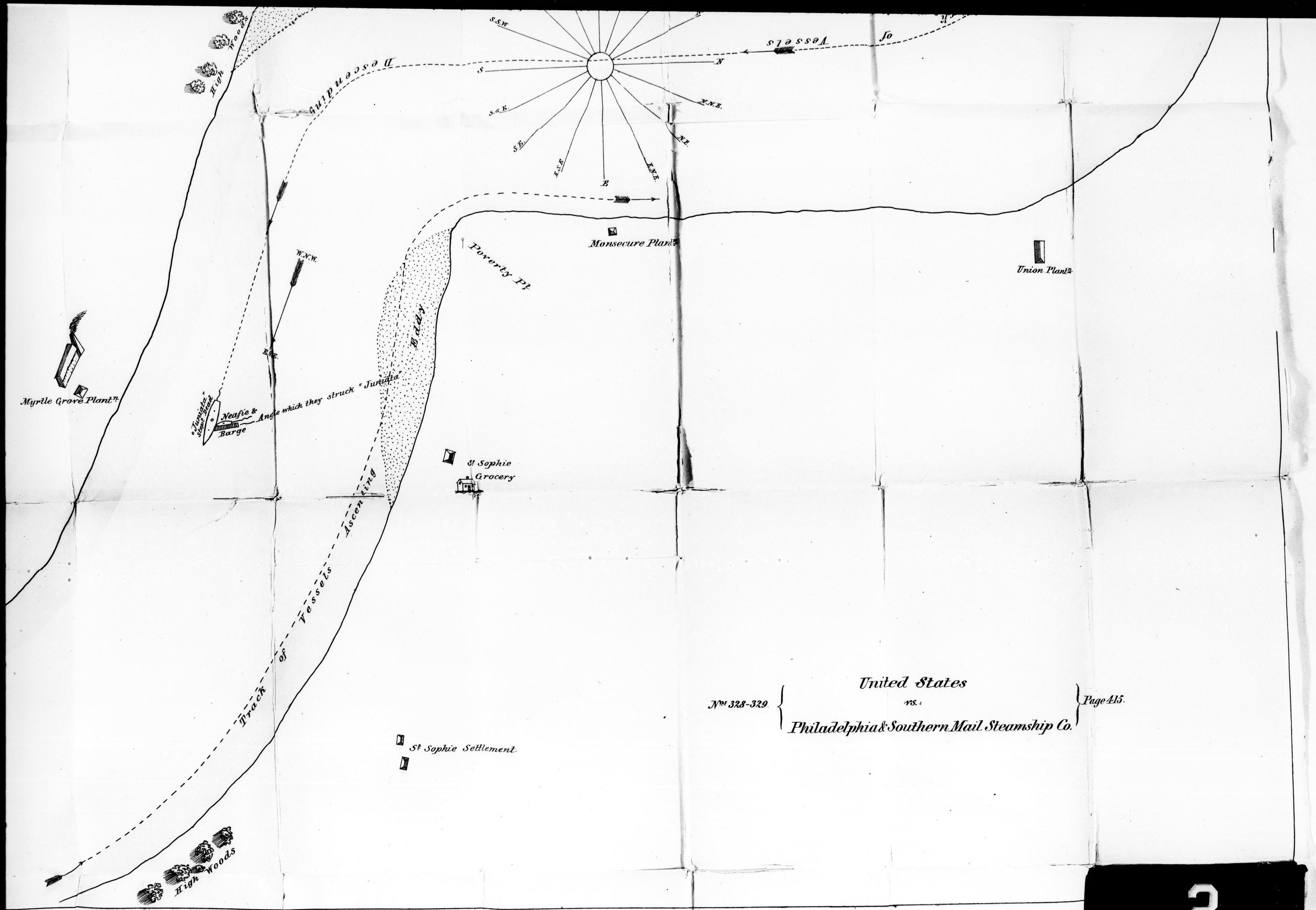
United States

vs.:

Philadelphia & Southern Mail Steamship Co.

Nos 328-329

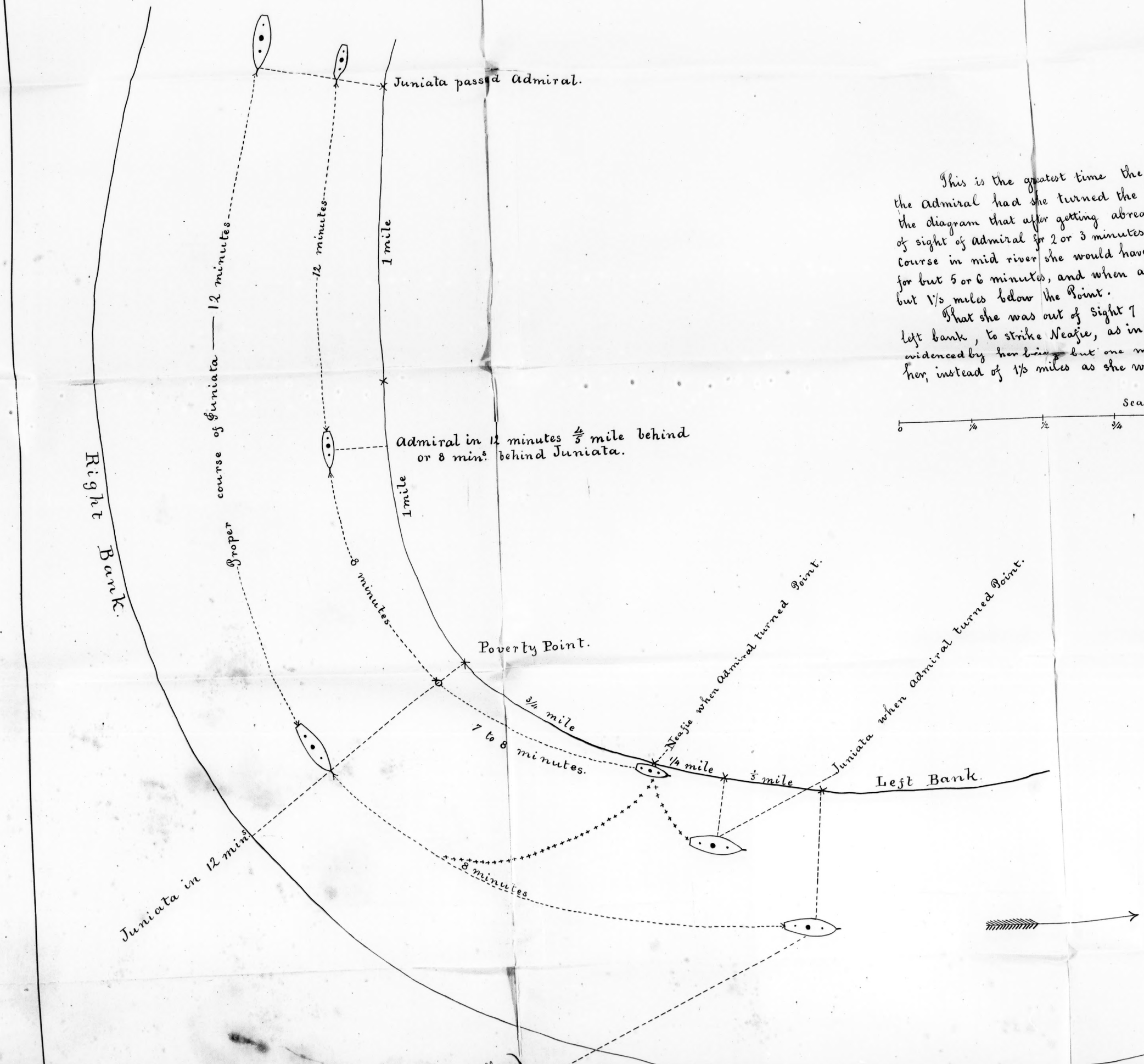
Page 4



Nos 328-329 { United States vs. Philadelphia & Southern Mail Steamship Co. } Page 415.

2

Juniata — 1 mile in 6 minutes.
Admiral — 1 mile in 10 mins.



This is the greatest time the Juniata could have been out of sight of the Admiral had she turned the Point sharply, but it will be observed from the diagram that after getting abreast of the Point she could not have been out of sight of Admiral for 2 or 3 minutes. — Had Juniata therefor kept on her course in mid river she would have been covered by the point from the Admiral for but 5 or 6 minutes, and when again sighted by Admiral would have been but 1/5 miles below the Point.

That she was out of sight 7 minutes is accounted for by the sheer into left bank, to strike Neafie, as indicated by dotted line, and this is further evidenced by her being but one mile below Point when Admiral again sighted her, instead of 1/5 miles as she would have been but for the sheer.

Juniata passed Admiral.

Right Bank.

course of Juniata — 12 minutes

Proper

12 minutes

1 mile

Admiral in 12 minutes $\frac{4}{5}$ mile behind
or 8 mins behind Juniata.

8 minutes

1 mile

Poverty Point.

Neafie when Admiral turned Point.

Juniata when admiral turned Point.

3/4 mile

7 to 8 minutes.

1/4 mile

3/4 mile

Left Bank.

Juniata in 12 mins

8 minutes

If Juniata had maintained her full speed she would have been 1⅕ miles or 8 mins. below the Point when the Admiral reached the Point .....

(note continued above)

This is the greatest time the Juniata could have been out of sight of the Admiral had she turned the Point sharply, but it will be observed from the diagram that after getting abreast of the Point she could not have been out of sight of Admiral for 2 or 3 minutes. — Had Juniata therefor kept on her course in mid river she would have been covered by the point from the Admiral for but 5 or 6 minutes, and when again sighted by Admiral would have been but 1⅕ miles below the Point.

That she was out of sight 7 minutes is accounted for by the sheer into left bank, to strike Neafie, as indicated by dotted line, and this is further evidenced by her being but one mile below Point when Admiral again sighted her, instead of 1⅕ miles as she would have been but for the sheer.

Scale 4" = 1 mile.

0 1/4 1/2 3/4 1 2 miles.

United States Supreme Court,

Of the October Term, A. D. 1876.

CHARLES E. WISWALL,
CHARLES G. NAZRO,
JOHN Q. THOMPSON,
Plaintiffs in Error.
vs.
GEORGE W. CAMPBELL,
LAWRENCE PROUDFOOT
Assignees in Bankruptcy of the Estate and effects of Augustus A. Wiswall, Bankrupt.
Defendants in Error.

Error to the United States Circuit Court of the Northern District of Illinois.

And now come the said Defendants in Error, by Lawrence Proudfoot, their attorney, and move the Court that the Writ of Error heretofore sued out in the above entitled suit, be dismissed for want of jurisdiction in this Court, and the said Defendants in Error be hence dismissed with their reasonable costs and charges in this behalf wrongfully sustained. For the reason that said cause is a proceeding wherein defendants, as assignees of Augustus A. Wiswall, a Bankrupt, opposed the allowance of a certain claim filed against the Estate of said Bankrupt by the Plaintiffs in Error, and wherein issues being formed, a hearing was had before the Hon. Henry W. Blodgett, Judge of the United States District Court for the Northern District of Illinois, and said claim was by him wholly disallowed and rejected, whereupon said Plaintiffs in Error having prayed and perfected an appeal from said decision to the United States Circuit Court of the District aforesaid, the issues were again tried under the provisions of Section 4984, of the Revised Statutes of the United States, before the Hon. Thomas Drummond, Judge of said Circuit Court, and a jury, and final judgment was rendered upon said appeal, wholly disallowing and expunging said claim; by reason whereof, and for the further reason that the law provides Section 4985) that the judgment of the Circuit Court in like cases shall be conclusive.

Also for the further reason, that the sum or value of the matter in dispute in said cause does not exceed, exclusive of costs, the sum or value of Five Thousand Dollars.

LAWRENCE PROUDFOOT.
Attorney for Defendants in Error.

UNITED STATES SUPREME COURT,

OF THE OCTOBER TERM, 1876

CHARLES E. WISWALL,
CHARLES G. NAZRO,
JOHN Q. THOMPSON,
Plaintiffs in Error.

vs.

GEORGE W. CAMPBELL,
LAWRENCE PROUDFOOT.
Assignees in Bankruptcy of the Estate and effects of Augustus A. Wiswall Bankrupt.
Defendants in Error.

Error to the United States Circuit Court for the Northern District of Illinois.

Northern District of Illinois, ss.

George W. Campbell. of lawful age, and a resident of the city of Chicago in said District, being duly sworn, deposes and says, that he is one of the assignees of the estate in bankruptcy of Augustus A. Wiswall, a bankrupt, duly adjudicated such, on the 21st day of February, A. D. 1874, and one of the defendants in error in the above entitled cause; affiant further states, that all of the property and effects of said bankrupt's estate, have been received by the assignees of said bankrupt and converted into money, and that the amount realized therefrom was the sum of eight thousand seven hundred and two 55 100 Dollars ($8,702.55-100); that the sum of one thousand eight hundred forty five 31-100 dollars, ($1,845.31) part of the same has been expended in necessary costs and charges in and about said bankruptcy matter; that the entire sum now in the hands of the assignees of said estate belonging thereto, is the sum of six thousand eight hundred fifty seven 24-100 dollars, subject to distribution among the creditors of said estate, after the payment of such further costs and charges as have been or may be incurred in the administration thereof; that claims to the amount of fifteen thousand six hundred and twenty three and 53-100 ($15,623,53) dollars have been proved up and allowed against said estate, which are not contested.

Affiant further states that a certain claim, proved and filed by Charles E. Wiswall, Charles G. Nazro, and John Q. Thompson, the above named plaintiffs in error in this cause, and which is the subject matter of the controversy therein, was objected to by the assignees of said bankrupt estate, and has been disallowed by both the District Court of said District, on original hearing, and the Circuit Court of the United States, on appeal from the order of rejection and disallowance entered in said District Court, amounting to the sum of sixteen thousand four hundred and sixty nine and 58-100 dollars ($16,469.58) : affiant further states, that if said last named claim is allowed and ordered paid in full out of the funds and property of said estate, its *pro rata* share, or dividend, would be less than three thousand five hundred and twenty dollars ($3,520) , and that such *pro rata*

share, or dividend, is the sum or value of the matter in dispute in said above named cause, and that the same does not exceed the sum or value of five thousand dollars.

GEO. W. CAMPBELL.

{ L. S. } Sworn to and subscribed before me, this 1st day of November, 1876, as witness my hand and official seal, at Chicago, the day and date last aforesaid.

WM. H. BRADLEY, Clerk of Circuit Court
U. S., N. District of Illinois.

To John H. Thompson, Esq.,

Attorney for Plaintiffs in Error:

Please take notice, that on Thursday, the 23rd day of November, A. D. 1876, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, I shall call up for argument and disposition before the Hon. Supreme Court at Washington, D. C. a motion to dismiss the Writ of Error prayed by said Plaintiffs in the above named case; a copy of which said motion, as also the affidavit of George W. Campbell in support thereof, is above written, at which time and place you can be present if you see fit.

Chicago, Ills. November 1st, A. D. 1876.

LAWRENCE PROUDFOOT,
Attorney for Defendants in Error.

I hereby acknowledge service of the above notice, with a copy of the motion and affidavit above set forth, at Chicago, Illinois, this 1st day of Nov. A. D. 1876.

JOHN H. THOMPSON,
Attorney for Plaintiffs in Error.

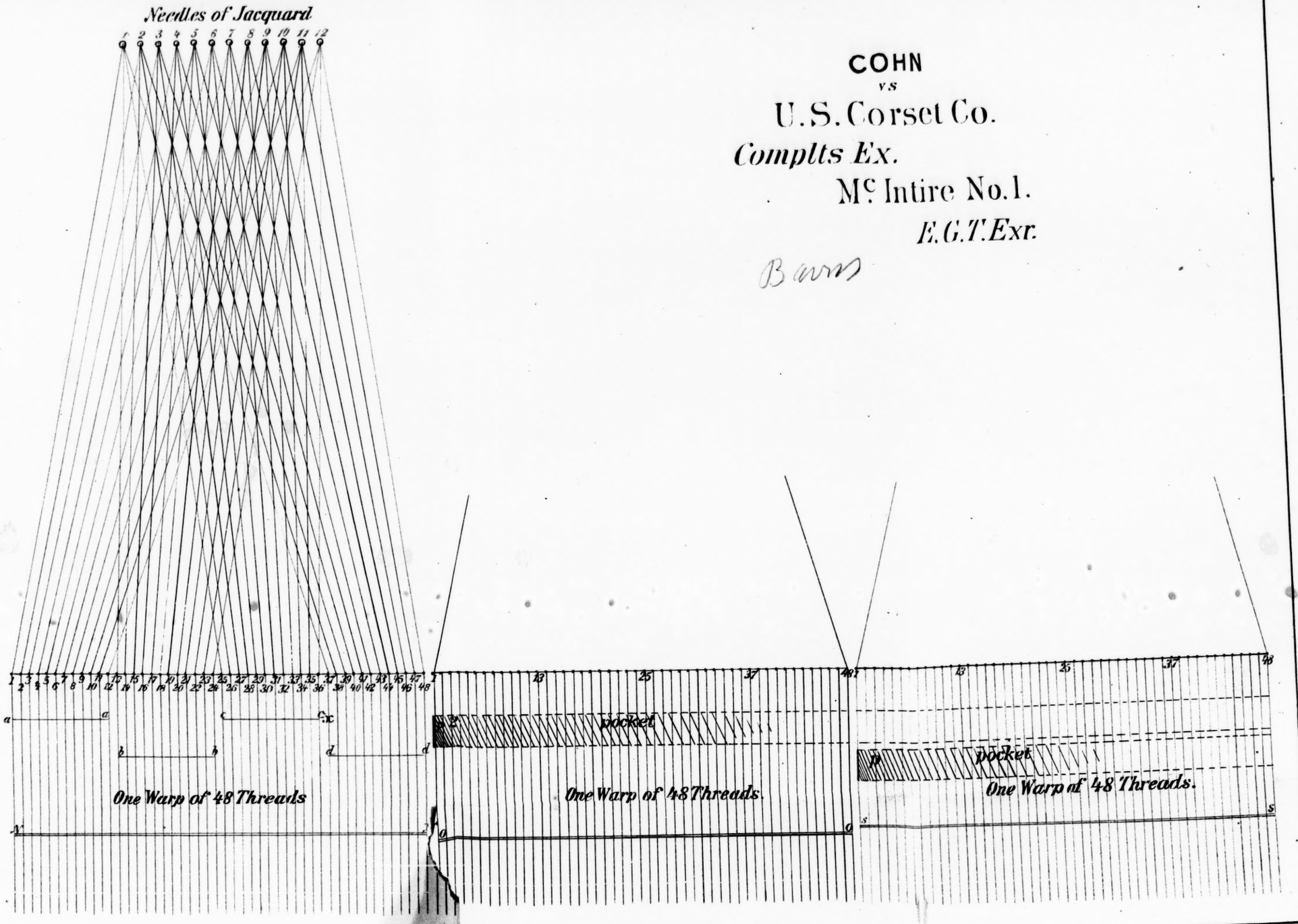
COHN

v.s

U.S. Corset Co.

Complts Ex.

Mc Intire No.1.

E.G.T. Exr.

Barn